July 4, 2011

REVIEW ON INEHERENT POWERS OF THE STATE

Before we go to bill of rights, let's review the inherent powers of the state that regulate the rights of individuals, which rights put limitations on the powers of the state. There has to be balance between authority on one hand and rights of the individuals on the other hand.

The authority we are referring here are:

1. police power
2. eminent domain power
3. taxation power

You should understand the limitations and the nature of the exercise of the power as to whom the power may be delegated.

1. POLICE POWER

Basically this is the law making power of the state. We have the power of the congress to pass laws in order ot promote the general welfare.

The general welfare could be:

1. Public safety
2. Public welfare
3. Public policy
3. Public morals
4. Public convenience
5. Everything pertaining to the protection of public interest

REQUISITES IN THE EXERCISE OF THE POWER

1. subject matter must be lawful
2. the means in achieving the purpose of the law must be valid

-PURPOSE refers top the protection and promotion of general welfare.

Because the supreme law is the welfare of the epeople which is the basis for the exercise of police power.

-if the means of achieving the purpose of the law is unreasonable, and oppressive, there may still be violation of law and a question on the validity of the exercise of the power.

WHOM POWER IS DELEGATED

The power is primarily vested in congress. For as long as congress exercises the power of congress, it is virtually a plenary power of congress subject only to such substantive and procedural limitations as provided by the constitution.

PERMISSIBLE DELEGATION OF THE POWER

Although you take note of the permissible delegation of the power.

1. president
   - in the exercise or emergency powers
2. administrative bodies
   -subordinate legislation
3. LGU's
   -under the welfare clause
   -however taking into consideration the limitation in the exercise of the power by LGU's excluding MMDA
4. people
   -through the process of initiative and referendum

NO COMPENSATION

Is there any compensation if this power is used by the government top limit the exercise of your rights?

NO. It is more on the promotion of general welfare and the destruction of property out of necessity.

And if there is taking of property for general welfare using police power, then there is no monetary consideration there.

The only compensation is the promotion of general welfare.

COMPNESATION: POLICE POWER VS EXPROPRITAION

In terms of compensation, you should know the exercise by the state of police power from the exercise of eminent domain or expropriation.

In both cases, it involves the taking of property.

However, the difference is that in the exercise of the police power, the property is normally noxious or harmful to the general welfare and thus there is no expectation of monetary consideration as compensation.

However if the property taken by the state is beneficial to the general welfare, ten there is always compensation because of the provision of sec 9 that states no person shall be deprived of property taken for public use without payment of just compensation.

NO TAKING OF PROPERTY

In police power, there is no taking of property. There is no transfer of ownership. What is being regulated is the use of the property.

PRINCIPLE OF DESTRUCTION OUT OF NECESSITY

It may only be taken when it becomes noxious to public welfare under the PRINCIPLE OF DESTRUCTION OUT OF NECESSITY.

SAFEGUARDS FOR THE PROTECTION OF RIGHTS

In relation to the limitation in the exercise of police power, you have those safeguards for the protection of rights of the individual persons in the bill of rights, you have:

1. due process of law
2. equal protection of laws
3. non impairment of obligations of contracts

1. DUE PROCESS OF LAW

So if you are to understand police power fully, you have to relate it to limitations and safeguards of due process.

HOW EXERCISED

How does due process, which is a right of the person, limit the exercise of due process?

1. substantive due process
2. procedural due process

1. SUBSTANTIVE DUE PROCESS

It tests the validity of the law itself as to its REASONABLENESS.

TESTS

It must comply with the two requisites:

1. subject matter must be lawful
2. means in achieving the purpose of the law is lawful

2. PROCEDURAL DUE PROCESS

You go by the requirements of procedure.

It is observed either in judicial process as well as quasi judicial or administrative due process of the law.

DUE PROCESS ON POLICE POWER

As to due process with police power, the police power of the state finds its justification in its observance of due process of law. In fact the law can be challenged of its constitutionality should it fail to comply with substantive due process such as the two requirements I have mentioned

2. EMINENT DOMAIN POWER

This is the power of the state limiting the ownership of your property. The government, the moment it exercises this power shall confiscate the property for public use upon payment of just compensation.

EXERCISED ONLY WHEN THERE IS REFUSAL TO SELL

IOW this power of the state can only be exercised by the state when there is refusal of the property owner to the government's offer to buy or acquire or take the property for public use.

It is only when at the start the owner of the property refuses to give up the property that the government will be compelled to exercise the power of eminent domain.

So basically this is a confiscation of the property. For as long as it is for public use and there is payment of just compensation.

EFFECT OF PREVIOUS AGREEMENT TO SELL

So that if there was a previous agreement between the government and property owner to sell the property, then there is no point of an expropriation power to be exercised by the government.

So when they started with negotiating on the sale of the property, and if it not complied with the property owner, the remedy of government is not expropriation, rather it will be for SPECIFIC PERFORMANCE OF THE CONTRACT TO SELL.

WHO EXERCISES

This power is lodged in congress. And insofar as the exercise of the congress, that is plenary.

This power is primarily lodged in congress except when the power by express provision of the constitution is delegated to the president, specially in the implementation of Land Reform Program, both urban and Rural.

SUBJECT TO JUDICIAL REVIEW?

IOW therefore, if it is the national government that exercises the power, the matter or the issue of WON taking is for public use is beyond judicial inquiry. It is not subject to judicial review.

It is only when the power is exercised by the delegate that that power insofar as WON the taking is for public use can be the subject of judicial inquiry.

IOW when the national government exercises judicial power, the only issue for the court to determine is the matter of payment of just compensation.

TO WHOM POWER MAY BE DELEGATED

This power may be delegated to

1. local governments
2. private corporations engaged in the operations of public utilities

REQUISITES IN THE VALID EXERCISE OF THE POWER

1. taking of the property in the constitutional sense
2. property is private property
3. for public use
4. payment of just compensation
5. observance of due process of law

1. TAKING OF PROPERTY IN THE CONSTITUTIONAL SENSE

-***Case: Republic vs Catilve***

There is the definition here on when it constitutes taking; does it requires actual eviction of the property owner from the property?

NO. As long as there is deprivation from the owner of the property of the beneficial use of his property or at least the purpose for which his property is intended, that is compensable, even if the owner is not actually evicted from his property.

-REQUIREMENTS:

a. entry in the property under color of title or authority
b. entry is permanent
c. owner is deprived of the beneficial use of the property or at least the purpose for which the property is intended.

-IMPORTANCE OF KNOWING THE TAKING

Why is it important in knowing when was the taking of the property?

Because that will be your basis in determining the amount of just compensation.

The point of reference, considering the appreciation of the value of the property, will be reckoned from the date of the taking as defined in the case of Castilve.

Usually, it is based on the actual filing of the expropriation case in court.

Although there are cases where the government may have physically entered the property even before the expropriation case is filed in court.

So it is the actual entry when the owner was deprived of possession of property, WHICHEVER COMES EARLIER.

EXERCISE OF POWER BY THE LOCAL GOVERNMENT

CONDITION PRECEDENT – OFFER & REFUSAL

There must be, as a condition precedent for filing of expropriation case, an OFFER to the owner of the property that is DEFINITE AND IN MONEY, and there is REFUSAL of the offer by the property owner. Only then can an expropriation case be filed in court. OW the case is *dismissable for lack of cause of action; or premature*.

PROPERTY

Then let's talk about the property involved.

1. anything that is the subject of expropriation
2. including the services

IOW it could be real or personal, tangible or intangible.

The only exception is money.

Of course PRIVATE because if it is already a property owned by the government in its sovereign capacity, there is no need to expropriate it because it already belongs to the state.

However if the property owned by the municipal corporation are PATRIMONIAL PROPERTY, meaning owned by municipal corporations in their proprietary capacity, should there be any taking of that property, it is compensable. (!!!)

PUBLIC USE

Take note what constitutes public use.

It is not the traditional concept of the property being used by the public.

Anything that redounds to the benefit of the community or a greater number of the people in the community, that is considered as public use.

Example. When you have a property expropriated for the purpose of relocating the squatters. Even if only 50 families will be benefited from it, it si considered as for public use.

Example. Tourism purposes.

Case: Reyes

A property was taken for the construction of a golf course. It was only for tourism purposes but it was considered as taken for public use by the government.

PAYMENT OF JUST COMPENSATION (!!!!)

Master this of all the requisites for the valid exercise of eminent domain.

HOW DETERMINED

Just compensation is determined by the courts.

There may be an initial definition of the just compensation such as in the implementation of land reform in the Urban Land Reform Program if the government through the DARAB.

However the decision based on that is not yet final. Anyone who questions and does not agree on it may always appeal to the courts and ultimately it is the courts that determined just compensation.

HOW TO DEFINE

So there are many items on how to define just compensation.

It is equivalent to:

1. FMV of the property
2. consequential damages (added)
3. consequential benefit (deducted)

FAIR MARKET VALUE is the price where the seller is not compelled to sell nor the buyer is compelled to buy, taking into consideration:

a. location
b. classification
c. usage
d. size
e. potential of the property
f. improvements found in the property

WHEN TO PAY

Due process demands that there has to be PROMPT PAYMENT.

Case: Republic vs Lim

TN of the DEADLINE provided for by this decision where SC said that should there be no payment of just compensation within 5 years from the finality of the judgment of the expropriation case, that shall entitle the owner of the property to recover his property.

Because usually in expropriation case, it is in simple fee, therefore the transfer is absolute. Which means that the owner as a general rule cannot move for the recovery of his property. And non payment of compensation is not a ground for recovery of the property.

But in this case, the SC has explained that should there be no payment at all within 5 years, then the owner should have the right to recover his property.

RECKONING PERIOD OF PAYMENT

What would be the reckoning period of payment of just compensation?

It would be based on the time of the taking of the property.

PAYMENT OF INTEREST AND REIMBURSEMENT OF TAXES – PDVV ALLEGED IN PLEADINGS

Would the owner be entitled to the payment of the interest and the reimbursement of taxes paid because insofar as the transfer of ownership, it is only effective upon full payment of just compensation? In the mean time, the property would still be in the name of the property owner. In which case, will he be obliged to pay the taxes of that property until there is full payment of just compensation? Is he entitled to the reimbursement of the taxes paid?

YES, if he alleges that in his pleadings.

OW he is considered to have waived that right for the claim of the payment or the reimbursement of the payment of taxes.

As to the interest rate, TN it is still 6% per annum until full payment, on top of the just compensation.

It is only when there is delay in the payment of just compensation despite repeated demands that the owner shall be entitled to the payment of 12% per annum.

The interest will be reckoned from the finality of judgment, when all appeals have been resolved, not on the rendition of judgment. You start counting the 5 years from the entry of judgment.

FORM OF PAYMENT

Generally, it has to be in CASH.

Recently, we have decisions of SC that in certain instances, it is not necessary that it has to be in kind, but other forms of payments other than the GOVERNMENT BONDS insofar as expropriation of properties for the implementation of the agrarian reform program of the government.

Case: CIR vs Central Luzon Drug Inc, June 26, 2006

Recently we have a decision relating to compensation in form of TAX CREDITS. They are considered as just compensation.

Now we have tax credits as well specially in the implementation of the Senior Citizen's Law on DISCOUNTS. This is a form of taking of government; taking of income of a private establishments because hey grant discounts of 20% for senior citizens.

Because this is not by nature noxious that is taken by the government, but is beneficial to the senior citizens, there has to be compensation for that. In exchange, there are tax credits that are given to these private establishments.

So this is now the form of compensation.

Case: CIR vs Nicolandia Drug Corp, July 21, 2006

SC said, tax credit given to commercial establishment for the discount enjoyed by senior citizens pursuant to RA 7432 is a form of just compensation for private property taken by the state for public use, since the privilege enjoyed by private citizens does not come directly from the state but from private establishments concerned.

Case: Heirs of Antona vs Reyes

You have here socialized housing, as a form of payment of just compensation.

HOW MUCH JUST COMPENSATION PAID BY GOVERNMENT TO BE ISSUED PERMIT OF POSSESSION

How much just compensation should be paid by government for the government to be issued with permit of possession?

Under rule 67 of the Rules of Court, there are two stages in an expropriation case:

a. when the government enters the property and has to make payment is certain percentage so that they can be issued a writ of possession

b. when there is the determination of just compensation

RULE 67 OF RULES OF COURT – 10% PAYMENT FOR THE ISSUANCE OF WRIT OF POSSESSION

Under rule 67 of the Rules of Court, remember that the deposit that must be made by the government so that a writ of possession would be issued by the courts is just 10% of the value of the property which is subject of the expropriation, based on the assessment made by the municipal or city assessor for taxation purposes.

For as long as:

1. the complaint is valid,
2. there is allegation that the taking is for public use, and
3. there is deposit of at least 10%,

it is ministerial on the part of the courts not, discretionary to issue the writ of possession so that the government can enter the property and start with whatever undertaking or project that they intend to use the property.

This is without prejudice to the second stage of the proceedings; the hearing of the just compensation of the property.

RA 8974 – 100% PAYMENT FOR NATIONAL INFRASTRUCTURES

However, TN of RA 8974, this is the expropriation of the national government for national infrastructures of the government.

Because while rule 67 requires a 10% deposit for government to enter, under RA 8974, it requires full payment of the estimated value of the property based on zonal valuation by BIR for taxation purposes.

This is without prejudice to the final determination of just compensation by the courts.

TN of this law for purposes of multiple choice.

-NO VIOLATION OF SC'S PREROGATIVE TO AMEND RULES OF COURT

Would this violate the ruling of the SC that only the SC can amend the rules of court? Because this in effect amends the rules of court particularly rule 67 of the Rules of Court, particularly relating to the payment of deposits for the purposes of expropriation?

NO.

Case: Republic vs Gingoyon

SC said, rule 67 outlines the procedure by which eminent domain may be exercised by the government. Yet, by no means will it serve as a present, a solitary guideline for which the state may expropriate private property.

Example. You have sec 19 of LGC; this governs as to the exercise of LGU of the power of imminent domain through an ordinance. As far as LGC, it is 15%.

And then there is RA 8974, which covers expropriation proceedings intended for national government infrastructure projects.

Under RA 8974, which provides for a procedure imminently more favorable to the property owner that rule 67, inescapably applies to instances when the national government expropriates properties for national infrastructure projects. And according to SC in this case, congress is never precluded from exercising its legislative prerogative, the power being plenary insofar as congress is concerned.

Although the matter of amending the rules is vested in the SC under its rule making power.

Remember under sec 15, congress is never precluded because it has the power to make laws.

Case: Republic vs Holy Trinity Realty Development Corporation

There are at least two crucial differences between the respective procedure under RA 8974 and Rule 67.

Under the statue, the government is required to make immediate payment to the property owner upon the filing of the complaint to be entitled to a writ of procedure.

Whereas rule 67, the government is required only to make an initial deposit with an authorized government depository,

and rule 67 prescribes the initial deposit to be equivalent to the assessed value of the property for purpose of taxation.

Under RA 8774, it provides the relevant standard for initial compensation, the market value of the property as stated tax declaration or the current relevant zonal value of BIR whichever is higher; and the value of the improvements or structures using the replacement cost method.

PROPERTY FOR PUBLIC USE TAKEN FOR ANOTHER PUBLIC USE

The purpose of the expropriation must be for public use.

Can you take a property already devoted for public use for another public use?

If the power is exercised by the national government, YES, because the power is plenary insofar s congress is concerned.

But if the power is exercised by a delegate, there has to be another law, a special grant authorizing the delegate to expropriate the property already devoted to public use for another public use. So LGC will not be enough to grant that power to an LGU in order to take the property already devoted to a public use for another public use.

PROPERTY EXPROPRIATED, SOLD FOR PRIVATE PURPOSE

If the property was originally taken for public use, can the sale be now sold to a private purpose?

Example. NHA expropriates a property, the purpose is for socialized housing. Later, it finds it as not appropriate for that purpose and sells it to a developer. Can that be done? YES.

Case: Asia's Emerging Dragon Corp vs DOTC

The state though expropriation proceedings may take private property even if admittedly it will transfer this property again to another private party as long as there is public purpose to the taking.

IOW the determining factor is only at the time of the taking of the property, was it for public purpose or for public use.

Once it is satisfied, then the property can be taken. And it becomes now the sole property of the government and the government now can dispose of the property in any manner, even selling it to a private party. Because here, the government now becomes the owner of the property in simple fee. It is is already the absolute owner of the property.

EFFECT IF LAW AS BASIS OF TAKING WAS DECLARED UNCONSTITUTIONAL (!!!)

If upon the taking of the property was based upon a law and later it was declared unconstitutional? How do you determine the just compensation here?

Case: Chionson vs NHA

Where the initial taking of the property subject to expropriation was by virtue of a law which was subsequently declared as unconstitutional, just compensation is to be determined as of the date of the filing of the complaint, and not the earlier taking of the property.

LAW FREE PARKING SPACE – UNCONSTITUTIONAL

Case: SolGen vs AyalaLand Inc., Sept 18, 2009

This concerns of the free parking of the customers of the mall. This was questioned because an ordinance was passed requiring them to provide free parking.

SC said, the prohibition against collection by Ayala of parking fees from persons who use the mall parking has no basis in the national building code or its implementing rules and regulations.

The state also cannot impose the obligation by generally invoking police power since the said power amounts to taking of Ayala's property without payment of just compensation.

IOW police power is not a justification in the prohibition against the collection of parking fees.

If it is allowed, it amounts to taking of property without payment of just compensation.

The collection of parking fee and its validity is sustained by SC.

RECOVERY OF THE PROPERTY – WHEN SPECIFIC PURPOSE WAS NOT ATTAINED

Remember that in recovery of the property, it depends the kind of expropriation. Because now there is a new issue.

What if the property is taken for a specific purpose, like for the construction of airport but no airport was established in the property? Can the owner recover the property?

If the expropriation is conditional to a purpose, and it is not served, it is like a donation; the owner of the property may recover the property. But of course there has to be payment of reconveyance, the initial payment to the owner of the property. And of course you consider the improvements as well at the time of the recovery of the property.

But if it is absolute, no conditions whatsoever, then there is no obligation on the part of the government to reconvey the property to the original owner of the property.

Case: ATO vs Tongoy

The right of the previous owners who were able to prove the commitment of government to allow them to repurchase the lands. So they had the right to recover the property.

EXERCISE BY PRIVATE CORPORATION ENGAGED IN OPERATIONS IN PUBLIC UTILITY

When the power is exercised by private corporations engaged in the operations of public utility, or quasi private corporations such as water districts.

REQUIREMENTS FOR VALID EXERCISE OF POWER

What are the requirements as to LGU's exercising the power:

1. definite offer in money
2. refusal

Case: MCWD vs JT and Sons Inc, April 16, 2009

What re the requirements?

For MCWD to exercise it power of eminent domain, two requirements should be met:

1. BOD passed a resolution authorizing the expropriation
2. exercise of power of eminent domain is subject to review by Local Utilities Administration (authority of LUA)

POLICE POWER VS EMINENT DOMAIN

PP: subject is usually a noxious property and thus there is no payment of just compensation in monetary terms

ED: usually beneficial and for use of public therefore, there should be just compensation

LIMITATION ON THE EXERCISE OF EMINENT DOMAIN VIS A VIS DUE PROCESS, EQUAL PROTECTION OF LAW, AND NON IMPAIREMENT CLAUSE

ON DUE PROCESS

There will be a hearing before the owner is deprived of his property.

Hearing of the payment of just compensation.
Prompt payment of just compensation.
These are part of due process.

ON EQUAL PROTECTION OF LAWS

All persons situated under the same circumstances should be treated alike by law.

ON NON IMPAIRMNET CLAUSE

As between the two, which one shall prevail? Eminent domain or non impairment clause?

Non impairment clause is subordinate to eminent domain power.

IOW if there is a contract of lease for example, between the original owner of the property and the lessee and the property becomes the subject of expropriation, can the government take the property even if the period of the lease has not expired yet?

YES. Because eminent domain is superior. The lessee may be prejudiced by the termination of the contract because of the expropriation. That may be compensable.

3. TAXATION POWER

Taxation is the power of the state to raise revenue. This power may be used by the state to enforce from the TP to contribute.

TO REGULATE AND TO DESTROY

However if taxation is used in order to regulate the exercise of one's right, definitely the property can even be destroyed by taxation power, such as imposing exorbitant taxes on businesses, that might be perceived to be harmful opn public welfare.

DOUBLE TAXATION

Is double taxation prohibited by the constitution?

The constitution is silent on the double taxation.

It becomes only unconstitutional when it violates equal protection of laws.

So double taxation may result to taxing the same property twice or more. But sometimes, the authority taxing the same property are different. Or sometimes the purposes are different but the result may amount to double of multiple taxation insofar as that property is concerned.

For as long as it is applied to all properties situated under the same circumstances, there is no violation on double taxation because there is no prohibition against it.

It is only when it violates now the equal protection of laws, then it becomes unconstitutional.

CHARACTERISTICS OF TAXATION

1. equitable
2. uniform
3. progressive

What is the difference between equitable and uniform taxation?

EQUITABLE refers to the capacity of the TP to pay. So depending on the income; in fact our tax system is PROGRESSIVE – as the income bracket increases, the tax rate likewise increases. That is equitable.

It is UNIFORM because it applies to all persons belonging to the same class.

GRANT OF TAX EXEMPTION

CONSTRUCTION

GR, all properties are subject to tax. In case of doubt, it should be resolved against the TP.

SOURCES OF EXEMPTIONS

Should there be exemptions that should be granted, you have those exemptions provided by the constitution, and the exemptions granted by statutes.

VOTES REQUIRED TO GRANT EXEMPTIONS

How many votes are required to grant tax exemptions in statutes?

Majority of members in congress.

If tax treaties?

2/3 votes of senate.

GRANT OF EXEMPTION BY LGU'S TO INSTRUMENTALITIES

Then we have tax exemptions granted by LGU's in respect to instrumentalities of notional governments.

Case: MCIAA vs Marcos

The case of Manila International Airport. The bottom line there is that if the instrumentality is not exempted expressly by law, the presumption under the LGC is that it is subject to taxation by the LGU.

However, in case of doubt, SC said that it will be resolved in favor of grant of tax exemption to the instrumentality of the national government.

Therefore it is not subject to tax.

Case: PPA

PPA is engaged in proprietary functions. The lands that they own un the performance of these functions, although for public service, according to SC is not being owned by the government in its sovereign capacity but its proprietary capacity. Therefore, it is subject to tax.

TO WHOM POWER IS VESTED

Primarily, the power is vested in congress. The collection is done by the executive branch, through the Department of Finance, particularly the BIR, Bureau of Customs and the other agencies of government.

But the imposition of taxes is primarily vested in congress.

TO WHOM POWER IS VESTED

DELEGATION TO PRESIDENT

Same with the delegation of power, for example to the president, on the tariff powers.

DELEGATION TO LGU'S

LIMITATIONS IN CONSTITUTION (SELF EXECUTORY)

TN of the limitations by the constitution to the LGU's, that even if there is no law passed by congress delegating the power to the LGU's, inasmuch as there is a constitutional provision granting the power to the LGU, as they can levy tax and raise revenue to ensure local autonomy, according to SC, that is self executing.

So even if there is no express grant of congress, they may exercise the power, because apparently, the mention of 'law' there refers to the limitations of the exercise of the power of LGU's because it is not inherent in them.

It is a delegated power, subject to such limitations as may be imposed by law, meaning laws passed by congress.

But WON there is a law granting that power to LGU's, it is not necessary because no less than the constitution delegated the exercise of the power to LGU's to ensure local autonomy.

LIMITATIONS:

AS TO DUE PROCESS

In compliance with due process, it must NOT BE OPPRESSIVE or UNREASONABLE. OW it would tantamount to taking the property without due process of law.

AS TO EQUAL PROTECTION OF LAWS

Taxation should be equitable and uniform.

AS TO NON IMPAIMENT CLAUSE

This is only on the matter of tax exemption.(!!!)

If the tax exemption granted to a TP is out of the generosity of the state, meaning there is NO CONSIDERATION on the grant of tax exemption, that is REVOCABLE by the state anytime.

However, if the grant of tax exemption is ONEROUS, meaning there is a valuable consideration in exchange for the grant of tax exemption, that cannot be revoked by the state as a general rule because the law now partakes the nature of a contract protected under the non impairment clause of the constitution. IOW it cannot be changed or modified by subsequent laws such that you repeal or revoke the grant of tax exemption based on a valuable consideration.

THESE INHERENT POWERS LIMIT THE EXERCISE OF YOU RIGHTS AS ENUMERATED IN THE BILL OF RIGHTS.

BILL OF RIGHTS

CLASSIFICATION OF RIGHTS

1. civil rights
2. political rights
3. socio economic rights
4. rights of the accused

CIVIL RIGHTS

CIVIL RIGHTS are enjoyed more by citizens and foreigners alike in this country.

Example. Freedom of speech, freedom of abode.

POLITICAL RIGHTS

POLITICAL RIGHTS are granted only to citizens of the country so that they can effectively participate in governmental affairs

Example. Right to vote and right to information and matters of public concern.

SOCIO ECONOMIC RIGHTS

SOCIO ECONOMIC RIGHTS are rights granted to persons to improve their standard of living or way of life. This is enjoyed by citizens and foreigners subject to such limitations provided by law.

Example. Ownership of property is enjoyed by both citizens and foreigners except that foreigners cannot acquire lands in the Philippines.

Example. Foreigners may engage in business except for those reserved only for citizens of the country and other areas of investments like retail trade business of mass media.

RIGHTS OF THE ACCUSED

Because of the presumption of innocence , he is afforded of all the rights in order to put him in equal footing with the state which is capable of taking his life, liberty or property.

SEC 1

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

THREE BASIC RIGHTS PROTECTED

1. right to life
2. right to liberty
3. right to property

SECURITY may be covered by the right to liberty as part of your right to privacy.

WHOSE RIGHTS?

Whose rights are protected under this provision?

'Person' may be a citizen of the Philippines or foreigners.

'Person' may be natural or juridical.

Insofar as natural persons are concerned, the guaranty of those protection are for those there rights.

Insofar as juridical persons are concerned, it is limited only to right to property.

RIGHT TO PORPERTY – COVERED

What is covered in the right to property? Does this include the right to operate a vehicle? The right to bear arms?

Case: Chavez vs Romulo (firearms)

Case: Garin vs MMDA (driver's license)

SC said, that the right to operate a vehicle and the right to bear fire arms are not property neither property rights protected under due process and equal protection of laws.

They are mere privileges granted by the state to an individual subject to police power.

Even without hearing, these rights can be regulated by the state, to the extent of taking it away from the person.

The law guaranties due process. Any taking or limitation or regulation of the right to life, liberty or property, there must be observance of:

1. due process
2. equal protection of laws
3. non impairment of obligations and contracts

In the Chavez case, there was the revocation of all licenses issued to owners f firearms. There was no hearing, there was just the pronouncement made the chief of PNP.

It was taken as taking of property right without due process.

SC defined WON the bearing of firearms is a property or a property right.

SC said that it is neither a property or property right, it is a privilege granted by the state, subject anytime to police power

So if it is not property, then it is not covered in the protection of due process.

HIERARCHY OF PROTECTION

In the hierarchy of protection, which of these rights are protected?

Right to life.

Case: Social Justice Society et al vs Atienza

This is with reference to the depot in Pandacan that LGU wanted to transfer. However this was objected to by the owner of the depot because that would entail millions of money, in the mean time there is the threat against the life of the residents in Pandacan.

Sc said, essentially, the oil company is fighting for their right to property, which they stand to loss millions if forced to relocate.

However, based on the hierarchy of constitutionally protected rights, the right to life enjoys precedence over the right to property. The reason is obvious; life is irreplaceable, property is not.

When the state or LGU exercises police powers clashes with a few individual's right to property, the former should prevail.

Case:

Implementation of the Senior Citizens Act where there is the objection of private establishment because this would amount to the reduction of income.

SC said, when conditions demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though shouldered by due process clause must yield to general welfare.

CANNOT BE INVOKED AGAINST ACTS OF PRIVATE INDIVIDUALS (!!!)

Case: Irasuege vs PAL

In the absence of governmental interference, the liberties guaranteed by the constitution cannot be invoked. The bill of rights is not meant to be invoked against acts of private individuals. This is against powers of the state.

So is it is only against private individual that your right to life is being violated or regulated, you cannot invoke this provision.

Because this is a limitation on the powers of the state against the exercise of your rights as guaranteed a protection under the bill of rights.

So this does not apply to the exercise of private power such as termination of employment under the labor code.

A. DUE PROCESS

SAFEGUARDS ON DUE PROCESS

There are two aspects:

1. substantive due process
2. procedural due process

1. SUBSTANTIVE DUE PROCESS

SUBSTANTIVE DUE PROCESS refers to the law itself. It is not just the proper implementation of the law. There is also the guaranty that the law must be fair, just and reasonable. It should not void nor over breadth.

REASONABLENESS

How do you pass the test of reasonableness of the law?

You go back to the valid exercise of police power, which is:

a. the subject matter of the law is lawful

b. means in achieving the purpose is likewise lawful

These two must concur. OW there is violation of due process, particularly on substantive due process.

OVERBREADTH DOCTRINE and VOID FOR VAGUENESS DOCTRINE

Included on this matter, you TN of VOID FOR VAGUENESS DOCTRINE and OVERBREADTH DOCTRINE, on FACIAL CHALLENGE and AS APPLIED CHALLEGE on the constitutionality of the law for it may violate due process of law. You should relate these.

TN that these two can only be applied to your freedom of speech. When these laws are passed, the subject of which is the limitation on the freedom of expression or of freedom of speech.

It does not apply to penal laws unless subject to the penalty applied to penal laws are referred to or related to the exercise of you freedom of expression like laws for libel

Case: Estrada

Like in the case of Estrada for plunder, where they were saying that it should be considered unconstitutional for being vague.

SC said that it should not be applied for penal laws unless the penal laws involves your freedom of expression particularly your freedom of speech, then you may apply this rule

OVERBREADTH DOCTRINE

The law is so comprehensive that you cannot anymore determine what is covered by the law as to its limitations as to the exercise on the rights of individuals.

This is likewise unconstitutional for it violates the due process of law.

VOID FOR VAGUENESS DOCTRINE

Same when the law is vague, which is the exact opposite over breath.

EFFECT: UNCONSTITUTIONAL

I am discussing this in relation to due process. Precisely it is declared unconstitutional because the person concerned subject of the law is not properly appraised of what the law is because it is over breadth or vague. The discretion is left on the person implementing it what the law is.

That should not be the case OW it is a violation of due process of law.

HOW TO CHALLENGE

And how you may challenge its constitutionality is either:

a. FACIAL CHALLENGE

-question the constitutionality on the face and not have to apply that to a case you are involved. it may only be on the tenor of the law itself that you question its constitutionality, by invoking the 2 grounds of over breadth or void for vagueness doctrine

b. AS APPLIED

-you are involved in a case and you are aggrieved, and you ask the court to declare the law unconstitutional for it violates due process, and you were prejudiced by the application of the law

2. PROCEDURAL DUE PROCESS

CASES COVERED

This is not purely judicial. It could be quasi judicial or administrative.

JUDICIAL in criminal cases and civil cases.

Civil cases, you have Palanca case.

Criminal cases, you have Pabarat vs SB, People vs Vera

Administrative cases, you have Ang Tibay case, and that involving students on actions relating to violations to school rules and regulation where the student is the respondent of the case.

Case: Palanca

The court must be impartial and have the authority to hear and try the case.

The court must have acquired jurisdiction over the person of the defendant or at least over the property subject of the case.

That the defendant is given the opportunity to be heard and whatever judgment that is rendered by the court is based on the evidence presented or at least found in the records of the case, meaning after trial is conducted in the court.

OPPORTUNITY OF HEARING

The bottom line in due process of law is opportunity of hearing.

What is abhorred is when there is total denial of hearing. As long as the respondent, defendant , accused in the case is given the opportunity even if there is no actual hearing conducted, there will be no violation of procedural due process of law.

All that is needed is the opportunity of hearing and thus requires notice of hearing in order to give the party the opportunity of hearing

INSTANCES WHEN HEARING OR NOTICE OF HEARING IS NOT REQUIRED

Another point you should TN in the requirement of hearing to comply with due process are the exceptions when no hearing is no required, and even notice is not required:

a. *administrative agencies are exercising quasi legislative functions*

-if it is exercising quasi legislative or administrative function, no hearing is required, even if it might affect rights of a person to property

-example. Fixing rates by MTC for test massages.

Fixing rates is legislative.

But the moment you reduce or increase the rates, that is quasi judicial, and that would require hearing.

-example. When there is contrariety of rights that would be resolved by an administrative body exercising its quasi judicial function, hearing is mandatory.

b. *abatement of nuisance per se*

c. *granting by courts of provisional remedies*

-example: writs of attachment or replevin

Because to conduct the hearing, you might be warning the respondent of the civil case. It may be done ex parte

PVDD that there is jurisdiction.

Service of the writ should be simultaneous to the service of summons OW void for violation of due process because he has not acquired jurisdiction over the defendant.

d. *preventive suspension*

-example. Preventive suspension of an erring public official in an administrative case.

Because preventive suspension is not a penalty yet but merely a precautionary measure. So it can be issued by administrative agency like the ombudsman, even without first notifying the respondent that a complaint had already been filed against him.

e. *removal of temporary employees in the government service*

-Because he does not enjoy security of tenure. (no reason is needed)

Only those regular and permanent employees of government enjoy security of tenure. Meaning they can only be removed for causes provided by law which is determined only after due process is observed.

f. *issuance of warrants of distraint and/or levy by BOR Commissioner*

-Because there was already prior notice of tax deficiency.

g. *cancellation of passport of a person charged with a crime*

-Because how can you notify a respondent or accused when he cannot even be found.

h. *issuance of sequestration orders*

i. *judicial orders which prevents the accused from travelling abroad*

-May be done even before the accused is arrested, ex parte just to make sure he will not escape

j. *suspension of bank's operation by M[illegible]pon prima facie findings of liquidity problems*

-No need for Central Bank to notify the bank concerned. They may just immediately take over the bank deposit to protect the deposits from being absconded by the officers of the bank or owners.

k. *extradition proceedings*

-Before the arrest, there can be issuance of the extradition order issued even before the subject of extradition is notified of the fact of extradition.

But the moment this reaches the court, then that would entitle him to notice.

This is just the preliminary or evaluation stage of the extradition proceedings.

l. *reinvestigation of criminal cases*

-If the fiscal affirms the decision of indictment of the accused, should the accused be notified of the resolution of the fiscal? NO. that is not required because there is a previous preliminary investigation conducted where the accused was sufficiently notified.

HEARING NEED NOT BE TRIAL TYPE

TN that hearing here is not always the trial type. It includes the requirement of pleadings so that even without the trial type of hearing conducted by the court, for as long as the defendant or respondent of the case is given the chance to submit his pleadings in order to tell his story, there is no violation of due process.

ACQUISITION OF JURISDICTION OVER THE PERSON OF THE DEFENDANT

-CIVIL CASES

On the acquisition of jurisdiction over the person of the defendant, how is jurisdiction acquired in civil cases?

It is through the service of summons:

a. personal
b. substituted
c. by publication

SUBSTITUTED SERVICE OF SUMMONS is given to person responsible who is of age.

SERVICE OF SUMMONS BY PUBLICATION is availed of when the address of the defendant is unknown or he has gone abroad and his return is not definite, whether the action is in rem or in personam.

In civil cases, sometimes, when the defendant cannot be found, before publication, the court may acquire jurisdiction over the defendant through acquiring jurisdiction over the property of the defendant, through a REPLEVIN or through an ATTACHMENT; where you place the property of the defendant under the control of the court because of the principle that wherever the principal is, the accessory follows. In this case, the principal is the land and the owner is just merely the accessory.

-CRIMINAL CASES

How does the court acquire jurisdiction over complainant of the case?

Upon the filing of the case.

How about the accused?

When the accused surrenders to the court or when the accused is arrested pursuant to the warrant of arrest issued by the court.

-ADMINISTRATIVE CASES

How about administrative cases?

Upon service of the notice requiring the respondent to file his controverting evidence.

PRESENTATION OF EVIDENCE BY THE DEFENDANT

-OPPORTUNITY TO PRESENT

He must be given a day in court. But TN only opportunity is given.

Included in this presentation of evidence is the right of the defendant to cross examine the witnesses of the plaintiff which is not only indispensible in criminal cases, but also in civil cases.

In criminal cases, all the more it is important. This is part of the right of the face to face confrontation of the witness of the prosecution, OW testimony of the witness is inadmissible in evidence against the accused for violating due process.

-WHEN MAY NOT BE AVAILED OF

TN that this may not be availed of by the defendant if he is declared in default in civil cases or in criminal cases where there is trial in absencia because the accused has jumped bail or he has escaped from jail, in which case, the right to cross examine is waived.

-AVAILABLE IN ADMINISTRATIVE CASES

In administrative cases as well, this is available because it is adversarial in nature.

RIGHT TO CROSS EXAMINE WITNESS

-NOT AVAILABLE IN PRELIMINARY INVESTIGATION

But if in some cases where there is clarificatory hearing by the fiscal in a preliminary investigation, the right to cross examine is not available.

The accused cannot cross examine the witnesses of the complainant. Should he ask questions, it should be addressed to in a clarificatory hearing, to the fiscal to ask and it is discretionary to the fiscal to ask the questions, because such right this not available to the accused in a clarificatory hearing in a preliminary investigation.

JUDGMENT BASED ON EVIDENCE AND RECORDS

Whatever judgment is rendered, it must be based upon the evidence presented or at least based on the records of the case.

Case: Ang Tibay vs Court of Industrial Relations

In an administrative case in the bar exam, the respondent was convicted and punished for acts that were not covered in the original proceedings subject to an appeal.

He was convicted for gross negligence and the penalty was merely suspension.

When he appealed the case, another similar incident happened. And because of that incident, instead of confirming the suspension, the appellate authority or tribunal increased the penalty to termination of service based on the subsequent incident that was not the subject of the original proceedings

SC said that there was denial of due process. Should there be judgment, it must be based on the evidence presented by the parties or at least found in the records of the case

DUE PROCESS IN EDUCAIONAL ESTABLISHMENTS

Due process as observed in educational establishments where the student is the subject of investigation. It is adversarial and he is entitled to due process as guaranteed by the constitution.

REQUISITES

1. know in writing the charges filed against him
2. opportunity to controvert the charges
3. assisted with counsel
4. tribunal must be impartial
5. judgment must be rendered only after hearing

B. EQUAL PROTECTION OF LAWS

GUARANTY OF EQUAL PROTECTION OF LAW

Persons situated under the same circumstances should be treated alike by law in terms of rights conferred by law and obligations imposed.

SUBSTANTIAL DISTINCTION

WHEN CLASSIFICATION IS ALLOWED – REQUIREMENTS

This is more on the classification.

It allows classification for as long as there is:

1. a substantive distinction
2. distinction is germane to the purpose of the law
3. applies to: a. existing conditions
   b. future conditions
4. applies to all persons situated under same circumstances

Case: Philippine League of Cities

One of their arguments is that they should be specially treated.

There is the amendment in the LGC that refers to the increase in the requirements in income, population and area into a city.

They are saying that that law should not be applied to them because at the time, this bill was still pending even prior to the enactment of the law.

The basis there is substantial distinction between the first 16 municipalities to be converted into cities and to the rest of the municipalities who may later apply for conversion into cities, applying now the amendment of the LGC as regard to requirement.

Case:

The creation of the Truth Commission was declared unconstitutional by SC.

One of the issues there was WON there was a substantial distinction in the subject of the Truth Commission.

The purpose was to curb graft and corruption. But there is the focus of the investigation was on the GMA administration. So the question is that is this group distinct from other groups who may be involved in graft and corruption? Why GMA Administration only? Why not other administrations? Does it mean that they are less corrupt or not corrupt at all?

Case: Trillanes vs Pimentel

This involves the enforcement of penal laws.

Case: People vs Jalosjos

Case: USA vs Poroganan

Basis of substantial distinction is position in the government. would that be a substantial distinction in terms of the enforcement of our criminal laws?

SC in all these three cases says that there is no substantial distinction.

Case: Farinas vs Exec Sec

Case: Quinto vs Comelec

The issue there is WON the nature of the position of the government is a substantial distinction in terms of considering him as automatically having resigned upon the filing of certificate of candidacy; between an appointive and elective individual.

SC said, that in both cases, after the reversal of the resolution of Quinto vs Comelec, there is a distinction between an appointive and elective official.

If you are APPOINTIVE and you file for a certificate of candidacy, automatically, ipso facto, you are deemed to have resigned from office.

But if you are ELECTIVE, it's not automatic. So that if you lost the election, you can still go back to your previous elective position for as long as the term has not expired with. Why? Because you have a covenant with your constituent to serve them for a definite period of time.

In Quinto case, SC said that there is no distinction.

Then there was MR filed and the SC reverted back to the case of Farinas vs Exec Sec.

DISTINCTION IS GERMANE TO THE PURPOSE OF THE LAW

You focus on substantial distinction in relation to the relevancy of the distinction to the purpose of the law.

If for example, the purpose of the law is to enforce the criminal laws; would the purpose be accomplished by the distinction.

If there is no relevance, then there should not be any classification. So these two must actually relate to each other

APPLICABLE TO EXISTING AND FUTURE CONDITIONS

It must not only be applicable to existing conditions but as well as future conditions.

Case:

This is the matter hat was tackled in the case involving the truth commission. Apparently, there is no clear distinction. And apparently, it is not relevant to the purpose of the law because it only focuses on the administration of GMA. And finally, it would seem like it applies only to that administration. It may not apply to future conditions.

There was also a question on the power of the president to create the commission, considering that it should have been congress to create an office.

That was sustained by SC as part of his power to control over the executive branch and the power to reorganize.

Case: People vs Kayat

This relates to the matter of drinking of liquor. It is applicable only to them. But there is no violation of equal protection of laws because it at applies not only to existing conditions but as well as to future conditions for as long as they react adversely to imported liquor.

C. NON IMPAIRMENT OF OBLIGATIONS AND CONTRACTS

We relate this to one of the safeguards against police power, eminent domain and taxation, and protecting the rights to life liberty and property.

PROTECTION OF EXISTING RIGHTS AND OBLIGATIONS OF PARTIES TO CONTRACT

GR, congress and delegates are prohibited from passing a law that will modify or change the terms and conditions of existing contract or agreement protecting the rights and obligations of the parties to the contract.

Because it is possible that the law may change the agreement however it does not affect the rights and obligations of the parties with reference to the contract. So there will be no violation there of the non impairment clause.

CONTRACTS COVERED

TN that the contract being referred to as protected under the laws are civil obligations; and agreement between parties, to give or not to give, to do or not to do.

CONTRACTS NOT COVERED

This does not cover:

1. *marriage contract*
   It is not an ordinary contract. it is a social institution and therefore it is subject to the protection or interference of state by law.
2. *law granting pensions*
   Pensions are not contract. it can be modified by subsequent laws
3. *licenses*
4. *public office*
5. *concessions to engage in logging or mining*
6. *permits to operate certain business*
7. *engaging in cockpit operations*

EXCEPTIONS RELATION TO THE INHERENT POWERS OF THE STATE

TN more on the exceptions on non impairment clause in relation to police power, eminent domain or taxation.

1. POLICE POWER

If it is for police power, even if there is a contract of employment in terms of agreement of wages, that can always be subject to a subsequent law, justified by police power.

Between non impairment clause and police power, police power is superior. It always prevails over contracts. After all, police power cannot be a subject of a contract, for it will delay the enjoyment of sovereignty by the state.

2. EMINENT DOMAIN

Between non impairment clause and eminent domain, eminent will always prevail. Non impairment clause is subject to eminent domain power of the state.

3. TAXATION

Between non impairment clause and taxation, taxation will generally prevail.

EXCEPTION (1) GRANT OF ONEROUS EXEMPTION

Tax is the lifeblood of the government. Contracts can always be limited by the taxation power of the state; except in the matter of granting tax exemption.

If the grant of taxing power is gratuitous, anytime, that can be revoked. However if it is onerous, that can be protected by the non impairment clause. Therefore it cannot be repealed or revoked.

EXCPETION (2) WAIVER

Another exception is when there is a waiver of the non impairment clause; when the parties themselves will stipulate in the contract that the terms of their agreement is subject to subsequent laws, different from the law governing between the parties.

By that waiver, the contract can now be subject of future laws providing for terms contrary to what was agreed upon by the contract.

EXCEPTION (2) FREEDOM OF RELIGION AS AGAINST CLOSED SHOP AGREEMENT

This is with reference to the freedom of religion and the contract.

Case: Rizalde

Closed shop agreement – no more shopping of a union in the company. This may be included in the collective bargaining agreement between the company and the union that for the employees to avail of the benefits that the company could given, they must be members of the union recognized by the company.

This is considered valid in order to protect labor, despite the police power of the state. It is sustained. There is no violation of the right to association where employees are virtually compelled to become members of the union as an exception to the exercise of police power.

However, if the religion of the employee does not allow them to be members of union; under a law, the SC sustained its validity as part of its police power on freedom of religion to allow these employees, notwithstanding that they are not members of the union to enjoy the privilege that may be extended by the union as an exception.

SC said that as between freedom of religion against the law that may impair an existing contract such as closed shop agreement, freedom of religion is superior.

SEC 2 – RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURE

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

CONSTITUES THE RIGHT TO PRIVACY

If you are asked, which of the following constitutes your RIGHT TO PRIVACY, one of which is the right against unreasonable searches and seizure.

There is no specific provision that says you have the right to privacy.

It is so provided in sec 2 that no person shall be searched and seized without a search warrant or a warrant of arrest.

-WRIT OF AMPARO

Case: Secretry of National Defense vs Manalo

The right to security of a person is a guaranty of protection to one's rights by the government.

In the context of a writ of amparo, the right is delved into the guaranties of right to life and liberty under art 3, sec 1 of the 1987 constitution and the right to security as freedom and guaranty of bodily and psychological integrity under art 3 sec 2.

Just in case, you will be asked on the right to privacy and right to security, this is one of the right guaranteed under the bill of rights.

So what will be the subject for the application of the writ of amparo? There is a violation of the right to privacy particularly on the unreasonable search and seizure where a person is arrested without warrant or his things seized without a warrant or his home is search without a warrant.

UNCONSTITUTIONAL – SEARCH WITHOU WARRANT

So the GR is, any search without a warrant is unreasonable and therefore, unconstitutional

REQUISITES FOR APPLICATION OF SEARCH WARRANT

Therefore, you should know what are the requirements in order to apply for a search warrant or a warrant of arrest.

No less than the constitution provides for the requisites.

CASE IS NOT REQUIRED TO BE FILED IN COURT

Here, it is not required that the case is filed in court. Precisely you are asking the court to intrude into the privacy of the person so that you can seize the things and be able to establish the condition of the crime relating him to the accused who may have committed the crime.

REQUISITES

First, let's talk about search warrant. What are the requirements for an application of a search warrant? (rules on criminal procedure)

1. subject for application of search warrant:
   a. property or thing is subject of the crime
   b. property is the fruit of the crime
   c. thing is used as a means of committing the crime

2. establish the existence of PROBABLE CAUSE

These are facts and circumstances antecedent/before the application of the warrant that would lead a prudent man to believe that the crime has been committed and the things you intend to search and seize may be found in that place, that would probably establish the crime, in linking the person who may have committed the crime.

-WHO DETERMINES

Only the judge can determine probable cause, if the purpose is investigation and/or prosecution.

Because if the purpose is only to carry out a final finding of violation of law, it may not be necessary for the judge to issue the search or seizure warrant.

Example. When the goods are established to be smuggled, they were concealed to avoid the payment of taxes, the commissioner of customs can immediately order the seizure of the smuggled goods to forfeit them. That is to carry the final finding. No more investigation, no more prosecution. In which case, that administrative authority can issue the seizure order.

-HOW TO DETERMINE PROBABLE CAUSE

How is probable cause determined by the judge?

1. personally examining the applicant and his witnesses
2. under oath

PERSONAL EXAMINATION has to be done in SEARCHING QUESTION AND ANSWER. OW it is merely based on affidavits. That would be a violation of the requirement of the constitution.

-REQUISITES CONDUCT OF SEARCHING QUESTION AND ANSWER

a. recorded by a stenographer
b. ex parte summary
c. whatever proceedings that has transpired will be put in writing and attached to the records of the case

CONTENTS OF SEARCH WARRANT – PARTICULARITY REQUIRMENT

The moment that the judge is convinced to issue a search warrant, there has to be particular description of:

1. crime charged
2. place to be searched
3. things to be seized

1. CRIME CHARGED

-GENERAL WARRANT/SCATTERSHOT WARRANT

If there is no mention what violation these things are to be seized, that's a GENERAL WARRANT. And it is void for not complying with particularity requirement.

SCATTERSHOT WARRANT is unconstitutional for it is a general warrant. It is the exact opposite of not placing the charge and placing as many charges so that the raiding party will have the leeway to get as many things that would relate to the many charges alleged in the search warrant. This is prohibited because it violates the requisite of particularity.

-ONE OFFENSE FOR ONE WARRANT

One search warrant for one specific offense only. It could be that there is one law, however there are many sections of law.

2. PLACE TO BE SEARCHED

-REQUISITE OF PARTICULARITY

Do you need a technical description of the place subject of the search?

NO.

Case: People vs Vallejo

As long as you can particularly point with certainty and particularity the identity of the property to be searched for and seized so that the warrant will not be a mere ROVING COMMISSION.

3. THINGS TO BE SEIZED

-WHAT IS TO BE TAKEN (!!!)

Case: Vallejo vs CA

Nothing is left to the discretion of the officer executing the search warrant.

REQUISITES FOR APPLICATION OF SEARCH WARRANT

WHO ISSUES

In the case of a warrant of arrest, only a judge can issue a warrant of arrest. That is for the purpose of investigation and prosecution.

However, if the purpose is to carry out a final finding of violation of law, an administrative authority may issue the seizure order of the person such as the case of the commissioner of the Bureau of Immigration and deportation as against undesirable alien for purposes of deportation.

There, there is no more investigation and prosecution. All that the commissioner has to do for the purpose of issuing the warrant is to have him deported; such as for those illegal aliens overstaying in the Philippines. It's easy. They will just confer with the records.

ON REQUISITE OF PERSONAL DETERMINATION OF THE JUDGE

REQUISITE: CASE MUST BE FILED IN COURT

TN that before a warrant of arrest is to be issued by the judge, a case has to be filed in court, unlike the search warrant.

Before a case is filed in court, there is already a determination of probable cause by the fiscal for proposes of indictment.

Once the case is filed in court, is the issuance of the warrant of arrest by the court automatic?

NO. Because of the requirement of the constitution saying that there has to be a judicial determination of probable cause for purposes of issuing a warrant of arrest.

HOW TO DETERMINE PROBABLE CAUSE

How does the judge conduct the determination of probable cause? Is it like in a searching question and answer as when you apply for a search warrant?

NOT NECESSARILY. Unless the judge deems it proper to call the complainant and substantiate his allegation in order to convince the judge that indeed there is probable cause to believe that the crime has been committed and the person to be arrested has probably committed the crime that would require his immediate custody of the law.

Or the judge may just simply PERSONALLY EXAMINE THE RECORDS OF INVESTIGATION and adapts the finding of probable cause by the fiscal.

TN however that upon reaching the decision, it must be based on his INDEPENDENT REVIEW of the records of the preliminary investigation and makes his own independent findings of probable cause.

That will be considered as substantial requirement to the personal examination of probable cause for the purpose of issuing the warrant of arrest.

Briefly, either the court:

1. calls the witnesses of the complainant again
2. base it on the records of preliminary investigation

For as long as the judge makes his own independent finding of the probable cause, even if he may adopt in toto the findings of probable cause of the fiscal

PROBABLE CAUSE: FISCAL'S FINDINGS VS JUDGE'S FINDINGS

-FISCAL'S FINDINGS OF PC

As far the fiscal is concerned, the PC refers to the facts and circumstances antecedent to the filing of the case to believe that this person charged has probably committed the crime and is probably guilty thereof. That is executive.

-JUDGE'S FINDINGS OF PC

In the judicial determination of probable cause that a crime has been committed and the person to be arrested must have probably committed the crime.

REQUISITE OF PARTICULARITY

You have to describe the person subject of the warrant of arrest by his name and particularly found in a particular address.

If his name is unknown, you place there John or Jane Doe. It is sufficient for as long as there is particular description of the person that would distinguish him from the rest of the human race. And you do that by identification of the witnesses.

OTHER FORMS OF INTRUSION OF RIGHT TO PRIVACY

On the matter of searches and seizure, this is not limited to the body of the person or his home or place or the seizing of things.

TN on the matter of right to privacy, there may be intrusion in a different form such as the requirement for blood test for purposes of the application for driver's license.

Because you are being charged criminally, you are being asked to get drug test.

If you are going to file a certificate of candidacy, you need to get a specification that you are not a drug addict.

In a recent controversy where students were required to undergo drug test in private schools before they are allowed to enroll.

You have drivers now being required to undergo drug test.

Would these be a violation against unreasonable search and seizure?

Case: SGS vs Dangerous Drugs Board and PDEA, Dec 3, 2008 (!!!)

SC declares as unconstitutional the law that requires drug test.

The law includes he requirement of drug test certification before you file for certificate of candidacy OW you will be disqualified.

Even those who are charged with estafa are required to go through drug test.

Never mind the requirement of LTO because that is justified by police power.

And then you have some complaints to violation of human rights as it violates the right to privacy as far as the students are concerned.

SC declared as unconstitutional the provision of RA 9165 requiring mandatory drug testing of candidates for public office and persons accused of crimes.

However SC upheld the constitutionality of said RA insofar as random drug testing for secondary and tertiary school students as well as for officials and employees of public and private offices is concerned. There can be random drug test.

The justification there is police power; the need for drug testing to at least minimize illegal drugs is substantial enough to override individuals' private interest under the premises.

Case: Ople vs Torres

On the matter of computerization on national identification. This has something to do with your right to privacy.

SC declared it as unconstitutional.

In a subsequent case, SC has sustained on the constitutionality as long as it will not go into the constitutionality of the individual.

RIGHT TO PRIVACY CANNOT BE INVOKED BY PRIVATE OFFICIALS

The right to privacy cannot be invoked by public officials.

EXCEPTIONS TO REQUIREMENT OF SEARCH WARRANT

1. incidental to a lawful arrest
2. evidence in plain view
3. with consent
4. search in a moving vehicle
5. customs search
6. stop and frisk/Terry search
7. search in cases of armed conflict or during war time
8. check points
9. exigent or emergency circumstances
10. routine airport search

1. SEARCH INCIDENTAL TO LAWFUL ARREST

IMMEDIATELY AFTER OR SIMULTANEOUS

It has to be immediately after or simultaneous to a lawful arrest.

LAWFUL ARREST

Arrest is lawful if:

a. it is with a warrant

b. it falls under the exceptions under rule 113 of rules of court

1. in flagrante delicto
2. hot pursuit
3. escapee from jail

So that the search made after the arrest is lawful, even if it is made without a warrant.

LIMITATIONS

a. done within the premises under the control of the person arrested

Case: People vs Chu

Case: People vs Estella

The arrest was made in one place, the search is made in another place. That cannot be allowed.

4. SEARCH IN A MOVING VEHICLE

MUST BE MOVING

TN it must be moving. And usually it is motorized.

Case: Fernandez

The motorcycle was just parked and it was seized without a warrant. Is was objected to as evidence.

According to them it was used as an escape vehicle of the fugitive and they saw it parked near a nipa hut.

SC said it is inadmissible. It was seized without a warrant. It was not moving, it was parked. IOW there ws no urgency to seize it.

LIMITED TO VISUAL SEARCH

TN the search is limited only to visual search. There is no extensive search.

Unless there is a probable cause that a crime has been committed, then an extensive search may be justified.

Case: Robin Padilla

There was visual search. It was apparent to the eye of the searching party who arrested eventually Robin because of the firearms from outside of the van by the arresting officers that laid on the floor of the van.

2. SEIZURE IN PLAIN VIEW

REQUIREMENTS

TN of the requirements. It cannot be just seen on the table if you have no business to be in the premises where the table is where you saw the contraband.

So these are the requisites

a. *prior valid intrusion*

Based on the valid warrantless arrest in which the police are legally present in the pursuit of the official duties.

IOW the presence in the premises must be legal.

What is the basis of the legality? That they are armed with a search warrant although the things to be seized were not included in the enumeration of the things to be seized in the search warrant. Bt because they are implementing a search warrant, their presence in the premises is legal.

Or when the owner of the property allows them to enter the house, then the presence in the property is legal.

(7-09 discussion) The person must have a legal basis to be in the premises where they have found the contraband.

b. *evidence was inadvertently discovered by the police who had the right to be there.*

Inadvertence. By mistake. Not by a deliberate search.

Example. If you are looking for long firearms, you cannot seize the bullets hidden in a tea cup.

c. *evidence must be immediately apparent to the senses*

IOW if you only suspected that what is covered is contraband and you opened it and inside was marijuana, what may happen? It may be seized because they are contraband but they are NOT ADMISSIBLE IN EVIDENCE because of the third requisite.

Case: People vs Go

This relates to the sealed stamp pad that were recovered b the searching party in a case of violation of immigration laws of foreign government. There was this agency that was raided by the police because they suspected them of issuing fake Chinese Visa. They were on the table.

However that fact was only certain or confirmed when it was declared by Chinese embassy that indeed these were counterfeit seals. But prior to the confirmation of the embassy, they will not know if the rubber stamps and seals were excluded in the commission of the crime.

Thus SC said they were inadmissible because they were searched without search warrant.

(07-09 discussion)

Case: Manalili vs CA

Case: Del Rosario vs Poeple

July 9, 2011

3. WITH CONSENT/WAIVER

REQUIREMENTS FOR A VALID WAIVER

However take note of the requirement in order to consider it a valid waiver:

a. *he knows he has the right*

Knowledge could be actual or constructive.

b. *the right exists at the time of search*

c. *despite knowledge of the fact that he has the right, he voluntarily, intelligently and freely waives the right*

5. CUSTOMS SEARCH

NO SEARCH ON RESIDENTIAL HOUSES

You cannot search for smuggled goods or goods tat were concealed for the payment of taxes in residential houses. Only in buildings.

So if your justification is because they are smuggled goods but they are found in a residential house, you should have a search warrant for that.

6. STOP AND FRISK/TERRY SEARCH

This was based Terry vs Ohio Case.

STOP AND FRISK SEARC VS SEARCH INCIDENTAL TO LAWFUL ARREST

You should know the difference between the search incidental to lawful arrest and the stop and frisk search.

SF: -search first then arrest
-you stop a person because of suspicion which is reasonable that he may be engaged in a criminal activity
-you can immediately stop and search him
-limited to outer clothing of person subject of search
-not an extensive search
-the moment contraband is found, you can make an arrest
PVDD you have to have probable cause that he committed an offense to make a warrantless arrest
-may fall on the first exception – accused committing a crime in the presence of arresting officer

SILA: -arrest first then search or simultaneous
-more extensive search

7. SEARCH IN CASES OF ARMED CONFLICT OR DURING WAR TIME

8. CHECK POINTS

ONLY VISUAL SEARCH

This is limited only to visual search, like in a moving vehicle.

REQUIREMENTS

a. *establish that it is a check point*

There has to be a purpose why a check point is established so that if there is any search, it would be limited only for that purpose.

b. *immediately apparent to the public that you are establishing a check point*

c. *no extensive search*

Except when you can establish probable cause because it is limited only to visual search

Case: People vs Escanio

9. EXIGENT OR EMERGENCY CIRCUMSTANCES

Allowed when there is a prevailing general chaos and disorder because of on going ___.

Or you may establish area, target, zones or saturations following a coup d' etat.

Case: Buanzon

10. ROUTINE AIRPORT SEARCH

Case: People vs Suzuki

Case: People vs Johnson

CONSEQUENCES IF SEARCH AND SEIZURE IS ILLEGAL

What will be the consequences if the search and seizure is illegal?

1. *evidence is excluded under EXCLUSIONARY RULE*

The principle is, being the fruit of the poisonous tree, it is also poisoned fruit. It is inadmissible.

2. *recovery of illegally seized items*

Unless they are contraband, being in custodial egis, you can recover the property by application of a WRIT OF REPLEVIN.

What about the money taken in custodial legis? Can it be recovered? Or should it remain in custoia legis? If it is the proceeds of illegal transaction, can you recover through writ of replevin?

YES. Because money per se is not prohibited by law. it is not a contraband. If it is established that it is illegally seized, then the owner has the right to recover it.

EXCEPTION TO SEARCH WARRANTS - WARRANTLESS ARREST

GR: any arrest should be with a warrant
OW: arrest is unreasonable, therefore unconstitutional
EXPT: falls under valid warrantless arrest
-rule 113 of Rules of Court
1. in flagrante delicto
2. hot pursuit
3. person subject to the arrest is a bugante

1. IN FLAGRANTE DELICTO

WHEN IN FLAGRANTE DELICTO
When the person arrested
a. was committing
b. is about
c. has committed
a crime in the presence of the arresting officer.

CONTINUING OFFENSE

The only thing you should take note is the nature of the offense charged like if it is continuing or not.

If it is continuing like rebellion, then even if the policeman who arrested the accused did not actually witness the commission of acts of rebellion, can make an arrest without a warrant because rebellion by nature is continuing offense.

Human trafficking is continuing offense.

Because of the nature of the offense, it would be as if the crime is committed in the presence of the arresting officer.

Case: Ladlad Veltran et al vs Gonzalez, June 1, 2007

This has something to do with the arrest of Veltran who was charged with rebellion. He was arrested without a arrant based on an affidavit of witnesses that he was committing rebellion.

Immediately after the arrest, he was brought to the prosecutor's office for an inquest so that a case can be filed against him in court.

He then challenged the validity of inquest because he was saying that he was not validly arrested. Because he was arrested without a warrant and he was not committing a crime at the time of his arrest.

TN in order to conduct a valid inquest, it must be based on valid warrantless arrest. You cannot have a valid inquest conducted by the fiscal to determine probable cause for the purpose of filing a case in court if it preceded by an illegal invalid warrantless arrest.

So if the arrest is illegal then that would make the inquest illegal, and consequently, the information filed in court is likewise invalid.

So in the case of Veltran, he was saying that he was not committing a crime and the persons who arrested him had no probable cause to arrest him without a warrant because in fat there was no rebellion committed by him.

He was sustained by the SC. Because the warrantless arrest was illegal, that makes the inquest illegal and therefore as a consequence the information filed was invalid and the case was dismissed.

SC says, inquest proceedings are proper only when the accused has been lawfully arrested without a warrant.

IN PRESENCE OF THE ARRESTING OFFICER

Case: People vs Padilla

When we say in the presence of arresting officer, it is not necessary to be in the physical presence. It could be only at hearing distance.

2. HOT PURSUIT

NEED NOT BE PRESENGT AT THE TIME OF THE COMMISSION OF THE CRIME

The difference between the first and the second exception was that the arresting officer was not present at the time of the commission of the crime.

REQUIREMENTS:

1. personal knowledge of the facts indicating that the person arrested must have committed the crime
2. from the time of the commission of the crime to the actual apprehension of the suspect, it must be CONTINUOUS

No supervening event that breaks the continuity of the chase. OW should there be an interruption, that could no longer be justified under the exception of hot pursuit.

Case: People vs del Rosario

SC said there must be a lodged measure of immediacy between the time the offense was committed and the time of the warrantless arrest.

If there is an appreciable time of the arrest and the commission of the crime, a warrant of arrest must be secured.

APPLIED ONLY AGAINST LAW ENFORCERS, NOT PRIVATE INDIVIDUALS

Right against unlawful searches and seizure may be applied only against law enforces, not private individuals.

We have cases like when they have a tenant on the hotel, who did not anymore pay his bills. And when the manager checked his room, they found contraband. So they called the NBI to make an investigation. They were able to know the identity of the tenant. Then the tenant was sued using the contraband that was recovered in his room.

The question there is, if there was no search and seizure warrant in the seizure of the contraband that was found inside the room of the tenant, is that admissible in the evidence?

If it was NBI who seized it, then definitely, it will not be admissible because there is no probable cause to believe that he was committing a crime inside.

But in this particular case, the one who found it was a private individual, the manager of the hotel. It was merely turned over to thee NBI.

In which case, you cannot use this against a private individual. This can only be enforced against law enforcers.

REMEDY FOR ILLEGAL ARREST

REMEDY BEFORE FILING OF THE CASE

What would be the remedy if you are illegally arrested?

You can apply for a writ of amparo or a writ of habeas corpus. You file for a writ of habeas corpus before the case is filed in court.

EFFECT OF FILNG OF THE CASE ON THE ISSUE OF THE LEGALITY OF ARREST AND DETENTION

The moment that case is filed in court and a warrant of arrest is issued, this will ratify illegal arrest and detention, because there is basis to further detain you because the case has already been filed in court and a warrant of arrest has already been issued.

IOW the legality arrest as soon as the case is filed in court shall become moot and academic. And that would lead to the dismissal of the habeas corpus. But not to the writ of amparo.

EFFECT OF FILING OF CASE ON APPLICATION FOR WRIT OF AMPARO

The writ of amparo may continue even after the filing of the case in court. Because this can be availed of by any person whose right to life, liberty or security is violated or threatened, even after the filing of the case in court.

EFFECT OF FILING OF CASE ON APPLICATION FOR WRIT OF HABEAS CORPUS

In habeas corpus, the only issue there is physical liberty; WON the arrest and detention is illegal. So the moment charges are filed in court, the illegality of the arrest is cured. That makes your detention legitimate because now there is a case is filed in court.

REMEDY AFTER FILING OF CASE

What is your remedy the moment the case is filed in court, if you cannot avail of the writ of habeas corpus and the writ of amparo?

You should not allow yourself to be arraigned. Move for the quashal of the information for it is invalid. There was no basis for the arrest. You did not commit any crime.

EFFECT IF YOU ALLOW YOURSELF TO BE ARRAIGNED

If you allow yourself to be arraigned without moving for the quashal of the information, what would that mean?

It would mean that you have waived your right to question the legality of the arrest and detention. You should have done that before arraignment.

POSTING OF BAIL – NOT A WAIVER OF RIGHT TO QUESTION

Is your posting of bail a waiver of your right to question the validity of your arrest?

NO. (New rules of court) You are never precluded from questioning the validity of your arrest, notwithstanding your posting for bail.

ADMINISTRATIVE ARREST (!!!)

You can be arrested administratively without a warrant.

Try to go to court and shout. You will be cited in contempt and the court will order your arrest without a warrant.

Try to roam around in Colon without pants. You may be arrested without a warrant.

CAUSES: BREACH OF PEACE; ONLY WHEN NECESSARY

Usually the causes for administrative arrest, if you breach peace or if you are planning to do so, you can be arrested but only if it is necessary.

WHEN FREED

You will be freed as soon as you no longer represent a threat to public security.

EXAMPLES

-if you destruct a court hearing,
-if you are in a drunken state on the public highway,
-if you block traffic without authorization,
-if you refuse to give your ID documents or if these are questionable
-if you are in the country illegally

SEC 3 – PRIVACY OF COMMUNICATION AND CORRESPONDENCE

SECTION 3.

(1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding **SECTION** shall be inadmissible for any purpose in any proceeding.

WHEN THE RIGHT MAY BE INTRUDED UPON BY THE STATE

1. when there is lawful order from the court
2. when public safety requires OW

COVERAGE

This includes electronic communications through cellphones, emails and internet.

HOW TO APPLY FOR ORDER OF THE COURT

It is like applying for a search warrant.

The only problem in the application for search warrant is that you have to particularly describe the communication that you would want to disclose or barred so that you will be able to sue the person who is harassing.

You can only make an estimation or approximation of what could be the content of the communication as basis for your application of search warrant to comply with particularity of the things that could be the subject of the search and seizure.

LETTERS FORM PRISONERS AND DETAINEES – DIMINISHED RIGHTS

Letters coming from prisoners or detainees in jail, are they protected by the privacy in communication and correspondence? Meaning before any letter would be sent out, is it possible that the letter should not be opened and read by the jail guards and officers?

Case: Trillanes vs Gabuway

This was the issue in the petition for habeas corpus filed by Alejano et all.

The letters of these coup d' etat detainees, they sent it through their lawyers as their postman/ courier. But before the lawyer could bring them out, from jail, they were opened and read. And thus they invoked privacy of communication and correspondence.

SC said that inasmuch as the letters brought out by the lawyer is not privilege communication between the detainees and the lawyer who was bringing the letters, then it is not covered the privacy of communication and correspondence.

According to the SC, insofar as the detainee is concerned, the right to privacy is limited by law.

We have law relating to that, RA 7438, where the SC said that the right to privacy of those detained is subject to sec 4 RA 7438 as well as to limitations inherent to lawful detention or imprisonment.

By the very fact of their detention, retrial detainees and

convicted prisoners have a diminished expectations of privacy rights.

Telephone conversation between the detainees and the outside communicators are even being taped just to protect the public safety and security of the jail.

You cannot therefore invoke the privacy of communication and correspondence because you do not have the same privilege as the people at large who are free.

TAPING OF PRIVATE CONVERSATIONS
ANTI WIRETAPPING ACT RA 4200

Case of Hello Garci.

EXTENT OF PROTECTION

What is the extent of protection as far as privacy of communication that your conversation in telephone call cannot be taped or bugged. That is the general rule.

So that if it is bugged or taped, what ever information taken from it is inadmissible from evidence because there is a violation of the privacy from communication.

TAKEN FROM EXTENSION LINES

However if it was taken from an extension line where there was no expectation of privacy, it is admissible, because this is only between regular lines, not extension lines of telephone units.

OTHER PROHIBITED ACTS IN RA 4200

1. distribution of transcriptions
2. replay of conversation

EXCEPTIONS

1. HUMAN SECURITY ACT – RA 9372

If it involves public safety, public security or public interest, in which case, you may ask for the bugging of the conversation.

This allows the bugging of conversation between a suspected terrorist.

SEC. 7. *Surveillance of Suspects and Interception and Recording of Communications.* -The provisions of Republic Act No. 4200 (Anti-Wire Tapping Law) to the contrary notwithstanding, a police or law enforcement official and the members of his team may, ***upon a written order of the Court of Appeals***, listen to, intercept and record, with the use of any mode, form, kind or type of electronic or other surveillance equipment or intercepting and tracking devices, or with the use of any other suitable ways and means for that purpose, any communication, message, conversation, discussion, or spoken or written words ***between members of a judicially declared and outlawed terrorist organization, association, or group of persons or of any person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism.***

Provided, That surveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence shall not be authorized. (THESE ARE PRIVILEGED COMMUNICATIONS)

WHO DETERMINES:

EXCEPTION 1 – LAWFUL PRDER OF THE COURT

It is the court that determined.

EXCEPTION 2 – PUBLIC SAFETY REQUIRES

It is the president who determines. Which power may be delegated by the president to the law enforces. Or you have those laws like RA 4200 and RA 9372.

SEC 4 – FREEDOM OF EXPRESSION

SECTION 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

COVERAGE

1. FREEDOM OF SPEECH
2. FREEDOM OF PRESS
3. FREEDOM OF ASSEMBLY AND PETITION THE GOVERNMENT FOR REDRESS AND GRIEVANCES

1. FREEDOM OF SPEECH

WHAT KIND OF SPEECH

You have COMMERCIAL SPEECH included in the freedom of speech.

And it is not limited to oral utterances. It also includes anything that is communicative in nature.

Like picketing, if you walk to and fro with your placard, that is part of your freedom of speech protected under the law.

GR, you can say anything as long as it is not libelous, seditious, violent or contrary to law. Same with the freedom of press and other freedom of expression.

COROLLARY RIGHTS:

1. FREEDOM FROM PRIOR RESTRAINT AND CENSURESHIP
2. FREEDOM FROM SUBSEQUENT LIABILITIES

-in determining liability, we have three tests:

a. clear and present danger test
b. dangerous tendency rule
c. balancing of interest

LIMITATIONS ON THE EXERCISE OF THE POWERS

1. *challenging the validity of the law*

Laws that may limit or intrude into the freedom of expression can be challenged on its face for reasons of:

a. void for vagueness doctrine
b. over breadth doctrine

These doctrines may only be applied on your freedom of expression. In fact you can challenge the constitutionality of that law mainly on the basis of the tenor of the law without necessarily applying that to your case.

Remember the two ways that you may question the constitutionality of a law:

a. on its face/ facial challenge
b. as applied to case

And usually in the freedom of expression, laws affecting or intruding into your freedom of expression may be challenged on to grounds, over breadth or that it is vague.

OVERBREADTH practically covering, there is no limitations now as to the intrusions. Practically, it is being regulated by the state.

VAGUE however means it is not clear. It is the opposite of the overbreadth.

Either way, this would be violative of the DUE PROCESS OF LAW, and in which case, it can be challenged in its face.

2. *regulations of speech: content base/content neutral*

In the determination of the limitations like the prior restraint or censorship, TN of these two regulations of freedom of expression in general:

a. content base regulations
b. content neutral regulations

The regulation of speech would either be based on the content of the speech itself or the surrounding circumstances when you deliver the speech.

The regulation may be CONTENT BASED subject of the speech or utterance is sought to be regulated.

CONTENT NEUTRAL if it regulates only the conduct associated with speech such as the time and place and manner.

Any CONTENT BASED regulation must show that the government has a compelling or overriding interest in the subject regulation in order to regulate the content of your speech.

It could be:

a. public safety
b. national security
c. public morals
d. public policy

CONTENT NEUTRAL restriction OTOH need only show an important government interest. As long as it leaves open alternative channels of communication.

IOW CONTENT BASED may only be regulated when there is compelling state interest involved. The government is strict. They would use CLEAR AND PRESENT DANGER RULE.

CONTENT NEUTRAL regulation, even if there is a small interest of the government, for as long as it can show that there is government interest, then it can already be regulated.

Like when it causes traffic, then you would have to be transferred to another place.

Case: Chavez vs Secretary of Justice Gonzales, Feb 15, 2008

In the Hello Garci controversy, Gonzalez was threatening the broadcasting radio stations that they will be closed by NTC and they will be sued if they will continue replaying. IOW the regulation is specific as it goes into the content of the speech that he wants to be restricted.

SC said, the acts of the secretary and the National Telecommunication Commission in warning stations aginst playing the Hello Garci tapes under pain of revocation of their licenses were content based restrictions ad should be subjected to the clear and present danger test.

TEST IN DETEMINING SUBSEQUENT LIABILITIES

IOW we have three tests in determining subsequent liabilities:

a. clear and present danger test
b. dangerous tendency rule
c. balancing of interest

COMMERCIAL SPEECH

What kind of speech that may be regulated by the state?

We are referring to advertisements.

When can that be regulated?

When you can show that the state has governmental interest in the advertisement.

As long as:

a. fraudulent
b. propose an illegal transaction
c. obscene,

then the government may regulate

Example: "Nakatikim ka nab a ng kinse anyos?"

This seems to be proposal of illegal transaction but tasting a 15 year old girl holding a liquor in the billboard.

STRICT SCRUTINY TEST/ O'BRIAN TEST

The use of the STRICT SCRUTINY TEST or the O'BRIAN TEST lies in the government to prove that indeed there is a compelling reason to intrude into the freedom of expression.

HECKLER'S VETO (!!!)

If you deliver a speech and somebody booed you, in order to maintain peace and order, you may be stopped from continuing the delivery of your speech to veto the hecklers.

It occurs when acting party's right to freedom of speech is restricted by the government in order to prevent a reacting party's behavior.

A common example is when the demonstrator causing a speech given by the acting party to be terminated to be terminated in order to preserve the speech.

2. FREEDOM OF PRESS

COROLLARY RIGHTS:

1. FREEDOM FROM PRIOR RESTRAINT OR CENSURESHIP
2. FREEDOM FROM SUBSEQUENT LIABILITY
3. FREEDOM OF SOURCE OF INFORMATION
4. FREEDOM NOT TO DISCLOSE THAT INFORMATION
5. FREEDOM OF CIRCULATION AND PUBLICATION

1. FREEDOM FROM PRIOR RESTRAINT OR CENSURESHIP

ROLE OF THE MTRCB

-LIMITED TO CLASSIFYING THE AUDIENCE

Freedom of press is not limited only on TV and broadcasting but also on movies and films.

And you have the MTRCB, an agency of the government regulating these agencies of the press on the purpose of classifying the audience.

It is a set of rules now that insofar as MTRCB is concerned, remember that theirs is only to classify. It is not for them to delete or censure any material that is obscene because that is a judicial function.

-NO POWER OVER TV PERSONALITY

MTRCB has no power over the TV personality or eh actor. They only have supervision and control over the program, not the personality.

For example, if a TV host misbehaves, they cannot discipline them. Only the program hosted by this personality that can be subjected to disciplinary action by MTRCB.

And that is the reason why to prevent MTRCB to punish the suspending the program by suspending its showing because that would cause loss of money, they would preempt that by suspending the host instead.

Case: Soriano vs Laguardia

And Dating Daan, where he was also included from the suspension, aside from Ang Dating Daan for making statements that are obscene.

SC nullified insofar as disciplining the host of Ang Dating Daan. Only the program that was suspended was sustained by SC.

SC said that Soriano's statement can be treated as obscene at least with respect to the average child. And thus his utterances cannot be considered as protected speech.

However, the MTRCB's suspension is limited only to the show, Ang Dating Daan, not Soriano, as the MTRCB may not suspend TV personalities, for such would be beyond his jurisdiction.

-DETERMINATION OF OBSCENITY

Again, on the determination of obscenity, that is a judicial function. And the guidelines for that, is in the case of;

Case: Kapit sa Patalim

Anything that caters to the basic or animal instincts of a man or sexual interest of man.

No scientific or cultural value, but purely for sex, then that is protected by law. It can be regulated, if not, whoever is responsible for it can be punished.

There is no guaranty of protection of subsequent liability there.

MAKING COMMENTS ON ACTS OF PUBLIC INDIVIDUALS

GR: NO LIABILITY

Case: US vs Gustos

For as long as the comment is fair and honest, there is no liability. Good faith is a defense of in libel cases against public officers.

EXPT: AGAINST JUDICIARY

1. LOWER COURTS – CLEAR AND PRESENT DANGER
2. SUPEREME COURT – DANGEROUS TENDENCY

Case: Borja vs CA

However, if it is a comment against judiciary, it is a different story. You can be cited for contempt for subjudicy[?] or for violation of the integrity of the court.

TN that in proving the liability, it is required that you are cited in contempt by a lower court. There is proof of guilt beyond reasonable doubt.

By clear and present danger that in your speech, there is a possibility that you erode the trust and confidence in the lower courts, then you can be held liable for contempt.

But if it is the SC that you attacked and criticized, all that it needs is dangerous tendency rule. As long as there is a tendency that you will erode the people's trust and confidence in the SC, you can be cited for contempt and punished for it.

3. FREEDOM OF ASSEMBLY AND PETITION THE GOVERNMENT FOR REDRESS AND GRIEVANCES (!!!)

PERMIT

Do you need a permit?

If you use a PRIVATE PLACE, you don't have to.

If you use a PUBLIC PLACE, it is for the purpose of regulating use of the public place as to time, place and manner of the assembly.

TESTS IN GRANT OF USE OF PUBLIC PLACE

1. PURPOSE TEST
2. OSFEASES[?] TEST

In the grant of permit to use a public place, who are the organizations organizing the assembly? – all these are taken into consideration.

Only when there is CLEAR AND PRESENT DANGER that in by allowing you to use that public place, you will be causing danger to public safety or national security or public convenience, then that can be regulated by the LGU concerned, where you are applying to use a permit for a public place.

It is not per se that your exercise to your freedom of assembly but the use of a public place.

BP 880 - ASSEMBLY ACT

You read this in connection with the case of:

Case: Bayan vs Ermita

Case: Reyes vs Bagatsing

This tests the extent of your enjoyment of freedom of assembly, which was later institutionalized into a law such as BP 880.

-PERMIT NEEDED ONLY WHEN USE PUBLIC PLACE

Here, it is emphasized that you do not have to ask for a permit to assemble. However, to use a public place, you need a permit from the LGU concerned.

-WHEN PERMIT IS NOT NEEDED FOR PUBLIC PLACE

1. PRIVATELY OWNED PLACE

The exception to this is that you don't need a permit when you use a public place from the government to use that place, even if it public, however it is private.

Example: the EDSA shrine. It is a private place, it is owned by the archbishop of Manila.

2. FREEDOM PARK

Another exception is the Freedom Park. There has to be a declaration of a Freedom Park by the LGU. You can use it without need of a permit.

In Cebu, Fuente Osmena is the freedom park.

3. CAMPUS OF A STATE UNIVERSITY

Example. Abellana. But you need a permit from the administrator of Abellana.

-ACTIONS TAKEN BY LGU

On the actions that may be taken by LGU in connection with BP 880, on your application to your permit…

1. GRANT OF USE OF PUBLIC PLACE

In connection to that, what is the prevailing principle in granting you to use a public place for a public rally?

It is still MAXIMUM TOLERANCE. The preemptive response has been abolished. What is now prevailing is that, as long as it is not tumultuous, you should be allowed freely to meet with your friends and country men to discuss matters of public concern in a public rally.

You should not be stooped unless there is a CLEAR AND PRESENT DANGER against public safety.

2. CHANGE OF VENUE

Case: IPB vs Atienza, Feb 24, 2010

This has reference to the asking for a permit from the mayor of Manila to use Mendiola Bridge as their rallying point. While they were allowed to hold the rally, however the place was changed. IBP was never informed of the change of venue.

SC said Mayor Atienza gravely abused his discretion when he did not immediately inform the IBP which should have been heard first on the matter of his perceived imminent and grave danger of the substantive evil that may warrant the changing of the venue under BP 880, the Public Assembly Act.

It is found that Atienza failed to indicate how he had arrived in modifying the terms of the permit against the standard of clear and present danger test, which is as indispensible condition to such modification.

Nothing in the issued permit adverts to an imminent and grave danger of a substantive evil which blunt denial or modification would have granted imprimatur as the appellate court would have it granted any judicial scrutiny thereto.

So if there is a change of venue, then the applicant shal have to be informed pursuant to BP 880.

SEC 5 – FREEDOM OF RELIGION

SECTION 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

PROHIBITIONS

1. NON ESTABLISHMENT OF RELIGION
2. FREEDOM OF RELIGION
3. NO RELIGIOUS TESTS

1. NON ESTABLISHMENT OF RELIGION

STATE HAS NO RELIGION

Simply put, the state has no religion. And so the state must not favor any religion. And this does not mean also discriminating against any religion or becoming hostile to any religion.

HOW STATE REMAINS NEUTRAL

For the state to be neutral in the midst on many religions:

1. state must not use any public funds for the support of any religion, religious sect, priests or any other ecclesiastical ministers

The only exception to this is when public funds are used for priests working at:

a. AFP
b. penal institution
c. government owned orphanages
d. charitable institutions

And thus the issue on the alleged donation of Pajeros and other SUV's to the bishops who requested for vehicles. They are saying that it is justified in asking because it is not for personal use of the priest but they are using it for charitable purposes.

But if it is in the name of the bishop then that would be difficult to defend. You are not supposedly to use the public funds for the purpose.

If it would be in the name of the charitable organization, it would be alright, however being used by the bishop.

EXCEPTIONS TO THE NON ESTABLISHMENT OF RELIGION

1. *optional religious instructions in public, elementary and high school*
   -requisites:
   a. consent of the parent or the guardian
   b. no additional expense to government
   c. done during school hours
   d. by an accredited or recognized teacher in that religion

2. *on grant of tax exemptions to real property taxes*
   -requisites
   a. actually, directly and exclusively used for religious purpose
   b. limited on real property

3. *educational institutions*
   -requisites
   a. by religious groups or mission boards

4. *compensation for priests assigned in:*
   a. AFP
   b. penal institution
   c. government owned orphanages
   d. charitable institutions

TWO TESTS

If funds are used by the government and the church is benefited, take note of the tests:

1. DOES IT ADVANCE RELIGION?
   -*the purpose is purely non secular*
   What is non secular? It means not religious at all.
   And if the religion or church benefited is merely incidental because the purpose is non secular.

2. DOES IT INHIBIT RELIGION?
   -*it is not entangling with religion*
   It has to be prohibited; being intimate with the religion or the church.

Go over these tests because in man instances, donations are given to catholic schools to improve their education. And instead the funds are used for the teaching of religion or the subject of chemistry however incidentally, it is a religious school.

It depends on the circumstances in the giving of the funds or if not, in passing the law or policy, that may benefit the religion or benefit the church.

2. FREEDOM OF RELIGION

PREVAILING PRINCIPLE: BENEVOLENT NEUTRAL ACCOMODATION

Case: Estrada vs Escritor

BENEVOLENT NEUTRAL ACCOMMODATION. For as long as there is no compelling state interest, there is a freedom to enjoy the freedom of religion.

For as long as there is no public interest that is prejudiced, you are allowed to freely exercise your freedom of religion.

In the case of Escritor, that even morality is based on religion. That is now acceptable.

Case: Ibralina

This was a reversal of the decision of the Herona case.

The saluting of the flag is no longer a ground for expulsion of pupils from the school because there is NO COMPELLING STATE INTEREST, and there is NO CLEAR AND PRESENT DANGER of a substantive evil to happen.

Case: Iglesia ni Cristo vs CA

This relates to the Classifying X; they have a TV program criticizing Roman Catholic Religion. It was rated X by MTRCB. Iglesia brought it up all the way to SC.

SC said it should not be classified as X because there is no clear and present danger that there will be war between these two religions.

So it was declared unconstitutional by SC.

Case: Ladlad vs Comelec, April 8, 2008

Ladlad was being accredited in being a party list. One of the reasons why SC considered Ladlad was art 3 sec 5 of the constitution.

SC stressed that no law shall be made restricting the establishment of religion or prohibiting the free exercise thereof. Thus it found a grave violation of the non establishment clause for the Comelec to utilize the bible and Koran to justify the exclusion of Ladlad.

SC held that moral disapproval is insufficient. Governmental interest to justify the exclusion of homosexuals from participation in party list systems.

Upholding and protection, the court ruled that from the standpoint of political process, Ladlad have the same interest in participating the party list system on the same basis on the same basis as other political parties similarly situated.

As such, laws of general application should apply with equal force to LGBT's and that they deserve to participate in the party list system on the same basis as other marginalized and under represented sectors.

The court finds that there was transgression of Ang Ladlad's fundamental right of freedom of expression since by reason of the Comelec's action, the former was precluded from publicly expressing its views as a political party participating in an equal basis in the political process with other party list candidates.

Case: Estrada ve Escritor

She was not declared immoral as it was accepted by her religion, in living with a married man while she herself is married, so long as they have pledge of love.

Morality there is based in religion; but not Ang Ladlad.

NON INTERFERENCE OF EACH OTHER'S FUNCTIONS OR ITS AFFAIRS

-INTRAMURAL CONFLICTS

INTRAMURAL CONFLICTS between the church or members of the church should not be interfered with by the state.

Unless it violates the established rules or laws of the country, in which case that the court will take cognizance of the conflict.

This is relevant because of the controversy of RH Bill and the pending bill for the adoption of divorce in the country. And this has been opposed by the religion.

WHO SHOULD BE EXPELLED OR EXCOMMUNICATED FROM THE CHURCH

In the matter of who should be expelled or excommunicated from the church, that is the discretion of the church.

Can you appeal that in the courts?

Certainly not.

3. NO RELIGIOUS TESTS

This simply means that religion is not a qualification in order for one to exercise his civil and political rights.

PROHIBITION ONLY AGAINST THE STATE

This prohibition however is addressed only against the state, not against private entities.

IOW if ISC will require religion to graduate from a course in college, you cannot say that there is violation of religious state because USC is a private entity.

But if UP requires religion then that would be a violation of no religious test as well as the non establishment of religion.

SEC 6 – LIBERTY OF ABODE AND RIGHT TO TRAVEL

SECTION 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

LIMITATIONS

There's a difference between these two in terms of limitations.

LIBERTY OF ABODE is the right to choose where you want to live and change the same within the limits prescribed by law.

The limitations being only LAWFUL ORDER OF THE COURT.

So therefore, you cannot be limited by chief of the PNP who wants to relocate you. You cannot be compelled by anyone except by the lawful order of the court. But an alternative answer to it is, yes, by the exercise of police power.

On the RIGHT TO TRAVEL, the limitations are:

1. public safety
2. public health
3. national security
4. court order

COURT RESTRICTION ON THE RIGHT TO TRAVEL

Can the court limit your right to travel, especially if you are facing charges in court?

YES. So as not to render the administration of justice inutile. Specially when you have posted bail because you have made an undertaking that you will be available before the court anytime you are asked to appear.

Case: Manolo vs CA (right to travel)

Case: Santiago vs Vasquez (right to travel)

Case: Villavicencio vs Lucban (liberty of abode)

The prostitutes were deported in Davao. They don't want to live in Davao because they have the right to chose where they want to live. This was sustained by SC.

Case: Quenca vs Salazar

This is about helpers.

Case: Sylverio vs CA

RIGHT TO RETURN TO COUNTRY

Another point you have to TN on the right to travel, the right to return to country is not covered in the right to travel.

Case: Marcos vs Mallacos

The right to travel in this particular provision of law does not include the right to return to the country.

So then what is the basis of the application of the ruling relating to the Marcoses allowing them to return to the country?

You gave the Generally Accepted Principles of International Law, which under the incorporation clause is deemed automatically part of the legal system:

a. art 13 – the universal declaration of human rights
b. art 12 – covenant of civil and political rights.

Under art 13 par 2 of the universal declaration of human rights, it provides that everyone has the right to live in any country, including his own and to return to his country.

So even if there is no provision relating to that in the Bill of Rights, you can still be allowed as part of this human right.

Art 12 on the Civil and Political Rights provides that no one should be arbitrarily deprived of the right to enter his own country.

Those are the two provisions justifying anyone to enter into the Philippines, even if it is not guaranteed in the right to travel.

SEC 7 – RIGHT TO INFORMATION ON MATTERS OF PUBLIC CONCERN

SECTION 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

INFORMATION NOT COVERED

Government transactions
On going government transactions
Those negotiations through treaties and agreements

This is a political right, therefore, it is available only to the citizens of the country.

RIGHTS COVERED

But not all information, although concerns the public are available to the public.

There are two rights involved in this section:

1. RIGHT TO INFORMATION
2. RIGHT TO ACCESS THE INFORMATION

LIMITATIONS

The right to information is a right guaranteed of protection under this law.

However the access is limited by the government; subject to such limitations as may be provided by law.

Example, time and manner and place where you can access information; and the fees you pay for the copies of these informations.

IOW you may have the access but it doesn't mean you will be given free copies of the information.

ON GOING NEGOTIATIONS OF GOVERNMENT OF GOVERNMENT TRANSACTIONS

On going negotiations of government of government transactions are not accessible to the public as a matter of right.

Case: Chavez vs Public Estate Authority

If there is a question on how this money bills regarding on the transactions of reclaimed lands.

SC said the constitutional right to information includes information on on going negotiations before the final contract is consummated.

The information however must constitute (TN of this qualification!!!) definite propositions by the government and should not cover recognized exceptions like:

a. privilege communication
b. military and diplomatic secrets
c. similar matters affecting the national security and public order

MATTERS THAT CANOT BE DISCLOSED

1. PRIVILEGE COMMUNICATION
2. MILITARY AND DIPLOMATIC SECRETS

3. TREATY NEGOTIATIONS

What about treaty negotiations? Can they be disclosed as accessible to the public?

NO.

Case: Akbayan vs Aquino

The Jepepa controversy, SC emphasized that it has been BY TRADITION, treaty negotiations are confidential in nature. It is part of the president's executive privilege and the president s never compelled to disclose information pertaining to treaty negotiations. That is by nature confidential.

4. MATTERS OF NATIONAL SECURITY

5. INTELIGENT INFORMATIONS

These are raw information from law enforcement investigation.

6. TRADE SECRETS

7. BANKING TRANSACTIONS UNDER BANK SECRECY LAW

Except when:

a. involved in money laundering

b. there are already cases like plunder case filed by ombudsman

Case: Lopel

There should be a case filed already in court and the information is relevant to the case.

In which case, there is an exception to the banking transaction kept as secret.

8. DIPLOMATIC CORRESPONDENCE

9. EXECUTIVE SESSIONS

Sessions being held to the exclusion of the media by the congress for example in a legislative inquiry or investigation, or closed door cabinet deliberations.

10. SC DELIBERATIONS

SEC 8 – RIGHT TO FORM UNIONS, ASSOCIATIONS AND SOCIATIES

SECTION 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

RIGHT OF THE PEOPLE IN GOVERNMENT

-HAS RIGHT TO FORM OR JOIN UNIONS

The right of the people in government to form or join unions is recognized. This includes the right not to be compelled to join any organization.

-PROHIBITED FROM ENGAGING IN STRIKES

However, TN for government employees forming unions, they are prohibited from engaging into certain activities, like to strike.

While the constitution is silent; unless OW provided by law, there is a law prohibiting government employees engaging in strike, under a Civil Service Rule as well as an executive order issued by the president.

RIGHT TO FORM ASSOCIATION – APPLY ONLY TO GOVERNMENT

Another point you should TN in the right to form associations is that it applies only to government. This does not apply to private organization.

For example, being compelled to be a member of a subdivision, or home owners association. It is not included because it is not government that requires it. It is part of the cumbrance of the property that you are intending to buy. And the moment you buy it, it is understood that you consented that you abide by the rules that would include of your being a member of the home owner's association. In which case, you cannot say that your right is violated there.

NOT INCLUDED IN THE FREEDOM OF ASSOCIATION

1. ENJOINING OF ASSOCIATION

On the prohibition or the limitations enjoining an association. You cannot invoke a violation of this right.

2. RIGHT TO BE GIVEN PERSONALITY BY SEC

Does this forming of association include the right to be given personality by SEC?

NO. It does not form an integral part of your freedom of association.

3. RIGHT TO STRIKE

Just like the freedom of association does not include the right to strike.

4. OWNERSHIP OF THE PROPERTY

If ownership of the property denied for an organization to acquire it, there is no violation because the acquisition of property does not form part of right to association.

5. POLITICAL PARTY'S PARTICPATION IN BARANGAY ELECTION

How about political parties, the purpose of which is to participate in election; when there is prohibition on them from participating in barangay election, would there be a violation on the right to association?

No. Because the justification there is police power. To allow political parties will negate the purpose of allowing the people from the grass roots to freely participate with equal opportunities in getting a position. So that there will be equal footing in the barangay in participating in electoral process without the intervention of political parties.

ASSOCIATIONS AND INDIVIDUALS PROHIBITED FROM FORMING UNIONS

There are certain associations or individuals however that are prohibited from forming unions or organizations or participating in organizations, such as:

1. SUCURITY GUARDS

For obvious reasons. They are dangerous when they are armed when negotiating.

2. SUPERVISORS

They are prohibited from forming or joining a union because there will be a conflict of interest. They are supposed to represent the management as against the labor.

SEC 9 – EMINENT DOMAIN

We have already discussed this.

SEC 10 – NON IMPAIRMENT OF CONTRACTS

SECTION 10. No law impairing the obligation of contracts shall be passed.

Congress is prohibited from passing a law which would change the terms and conditions of existing agreements that would affect the rights and obligations of the parties with respect to the contract.

NOT COVERED:

1. MARRIAGE CONTRACT

This does not cover marriage contracts because it is not an ordinary contract.

We have discussed this when we discussed the limitations on the right to life, liberty and property.

2. LICENSES
3. PUBLIC OFFICE

EXCEPTIONS:

The only exceptions to this where it can be impaired anytime are:

1. POLICE POWER
2. EMINENT DOMAIN
3. TAXATION
4. WAIVER BY THE PARTIES OF THE CONTRACT

Stipulating that their terms and conditions are subject to laws that may be passed in the future contrary to present agreement.

5. FREEDOM OF RELIGION AS TO CLOSED SHOP AGREEMENT

As between freedom of religion and closed shop agreement, freedom of religion prevails.

6. GOVERNMENT OR PUBLIC CONTRACTS

Such as contracts granted to individuals to engage in the operations of public utility. It is congress that issues the franchise. However, the constitution is very clear that this is subject to amendment, repeal or modification.

So there is a reservation there by government.

REVOCATION INSOFAR AS EXERCISE OF TAXATION POWER

TN on the revocation insofar as exercise of taxation power, especially on the GRANT OF TAX EXEMPTION.

You have to determine if it is for valuable consideration or if it is out of the state's generosity.

Because if it is ONEROUS, it cannot be revoked without violating the non impairment clause.

SEC 11 and 12, we are going to discuss that on the rights of the accused…

SEC 20 – NON IMPRISONMENT FOR DEBT AND NON PAYMENT OF POLL TAX

SECTION 20. No person shall be imprisoned for debt or non-payment of a poll tax.

COVERED DEBTS

As long as the debt arises from a contractual obligation, not for fines imposed by the state, not for commission of crime, or civil liability from the commission of crime, you cannot be imprisoned.

RENTALS

Rentals, can you be imprisoned for non payment of rentals?
NO.

Case: Guidorio

Debt as used in the constitution refers to civil debts or one not arising from criminal offense. Clearly, the non payment of rentals is covered by the constitutional guaranty against imprisonment.

SEC 18 – RIGHT AGAINST INVOLUNTARY SERVITUDE

SECTION 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations.

(2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

Involuntary servitude is likewise prohibited in art 272 of RPC.

EXCEPTIONS

1. for punishment of a crime – forced labor
2. service in defense of the state
3. naval enlistment
4. principle of force commitatus, able bodied citizens of the community may be compelled to render service for the security of the community
5. return to work order from NLRC
   Refusal could mean dismissal from service
6. on the basis of patea protestas of the discipline of someone who is under 18 or under parental authority

WE ARE DONE WITH THE CIVIL LIBERTIES.
Next meeting, we focus on the right of the accused, before during and after criminal prosecution

July 11, 2011
LATE RECORDING

SEC 14 – RIGHT TO SPEEDY TRIAL

SECTION 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

If there is a delay in the conduct of preliminary investigation for more than 3 years, that would amount to denial of due process of law that would entitle the accused of the right to the dismissal of the case.

EFFECT OF DELAYED RESOLUTION

However in other cases in the courts where there is a delay in the resolution of the case or the decision of the case, this does not affect the validity of the decision notwithstanding the delay.

The judgment or decision is valid. However without prejudice to administrative liability on the part of the judge for the delay.

That's why they are saying that insofar as compliance with 3, 12 and 24 months is concerned as required in the constitution in the resolution of the case insofar as speedy disposition, that is merely DIRECTORY in a sense that judgment is still valid even if it is rendered after the lapse of the period given.
However it is MANDATORY as regards to the judges and justices because that could be a ground for disciplinary action.

SEC 12 - RIGHTS OF SUSPECTS WHILE IN CUSTODY

SECTION 12.

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited

(3) Any confession or admission obtained in violation of this or **SECTION** 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this **SECTION** as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

RIGHTS OF SUSPECTS WHILE IN CUSTODY

This is with reference to a right of suspects while he is in custody of law.

1. *right not to be made to answer for any criminal offense without due process*

Due process being referred to here is both substantive and procedural.

Substantive, meaning there has to be a law punishing the act for which he is being charged. Because even if the act complained of is immoral, it would not necessarily constitute a crime unless there is a law defining it as a crime.

On a procedural aspect, you have to go through the procedure of due process that he is given a day in court before the accused shall be indicted and ultimately be made to answer for the charges.

2. *MIRANDA RIGHTS OF THE ACCUSED*

a. right to remain silent
b. right to be assisted with the competent and independent counsel
Preferably of his own choice.
c. right to be informed that he has these rights

3. *right not to be places in a solitary confinement*

4. *right against forced violence, intimidation and by means that would vitiate his free will to be used against him that will extract confession or admission*

Person responsible for that can be held civilly, criminally or administratively liable.

The victim for such violence and intimidation is entitled to compensation and rehabilitation.

CUSTODIAL RIGHTS/MIRANDA RIGHTS

a. right to remain silent
b. right to be assisted with counsel
c. right to be informed that he has these rights

-WHAT CONSTITUTES CUSTODIAL INVESTIGATION

In order to understand these rights, first you must know what would constitute a custodial investigations.

It is an investigation conducted by a law enforcer, like PNP, FBI, CIDG, and other offices tat is tasked with the enforcement of the law.

It must be done by the law enforcer immediately after the accused is arrested, or he is in any way deprived of his freedom of action.

-WHEN THERE IS A CUSTODIAL INVESTIGATION

There is custodial investigation already when the person is arrested.

When you are invited merely for questioning related in the crime under RA 7438, that is already considered as part of the accused being placed in the custody of law.

-WHEN THERE IS NO CUSTODIAL INVESTIGATION

What is not covered by custodial investigation?

1. *POLICE LINE UP*

IOW custodial investigation has not yet commenced even if the person is being placed in a temporary custody of law for purposes of identification, he is PLACED IN A POLICE LINE UP.

-POLICE LINE UP

A police line up as a general rule is not part of custodial investigation yet. And for this reason, he is not entitled to Miranda rights.

-WHEN SEIZE TO BE EXPLORATORY INVESTIGATION

Of course when we speak of police line up, it has to be the accused placed in a line up of suspects, not just one person placed in a line where he is made to be identified by a witness; in which case, you zero in on him as the only suspect in the commission of the crime. And the moment that you have done that to the accused, the accused will be entitled of his rights because it ~~seizes~~ now to be just an exploratory investigation, now it starts as a custodial investigation.

2. *INVESTIGATION BY ADMINISTRATIVE OFFICES*

Investigation conducted as well by administrative government offices through their investigators are not c covered by custodial investigation.

Custodial investigation usually covers criminal investigation, not administrative investigation which may be private or governmental administrative investigation.

Example. A COA audit examination where the accused has made an admission. The admission is admissible in

evidence even if at the time of his admission or confession, he was not assisted with counsel because administrative investigation is not covered by custodial investigation.

3. *SPONTANEOUS STATEMENT*

TN of the manner that the statement or admission or confession was made by the accused. Was it made by him before he was arrest? Spontaneously? Then that is not yet covered b the custodial investigation entitling him of the custodial rights?

4. *RES GESTAE OR ADMISSION TO PRIVATE INDIVIDUAL*

Or was it made res gestae to a private individual even to a law enforcer for as long as he has not been deprived yet of any freedom of action then that is still considered admissible in evidence.

Or when the suspect made a confession to the media because the media is not a law enforcer, that is admissible in evidence.

Or to any private individual, the admission or confession is admissible to evidence, even if he was not informed of his Miranda rights.

-A. RIGHT TO REMAIN SILENT

It is the right not to be a witness against himself. It is right against testimonial compulsion. This is equivalent to right against self incrimination during criminal prosecution.

This is derived from the case of Miranda vs Arizona. This is equivalent to the 5th amendment of the US. – that he may not be compelled to discuss to any query that may form a self incriminating evidence against him.

-PURPOSE

The purpose of having such right is so that his testimony which may have been made during a custodial investigation cannot be just discriminately used against him.

-BODY USED AS EVIDENCE/MERE MECHANICAL ACTS

What if it is his body that is used as evidence, like:

a. paraffin testing
   -to determine the presence of gun powder
b. fluorescent powder test
   -to determine if he had received the marked money
c. pregnancy test
d. DNA test
e. photographing of the accused
f. measuring of the body of the accused

TN that all these are MERE MECHANICAL ACTS. they would form part as real evidence as part of the physical evidence where the body is used as evidence. They are admissible as evidence.

-SCOPE – MAY NOT BE COMPELLED TO GIVE

1. *oral utterances or verbal answers to queries that may be made by a law enforcer*
2. *anything that is communicative in nature*
   -such as asking him to reenact how the crime is committed.
3. *sample of handwriting*
   -because giving a sample of handwriting is not a pure mechanical act
   -but if he is confronted with a document and he immediately denies any writing as his, that is tantamount to a waiver of his right. The moment he makes the denial, he may be compelled a sample of his writing to compare it with the writings in the document subject of the offense.
4. *arrest on booking sheets*
   -that is self incriminating.
   -you cannot be made to sign an arrest booking or an inventory receipt without informing the accused of his Miranda rights

-WAIVABLE

Is the right to remain silent waivable?

YES.

However if he has to make a confession, it has to be:

1. free, voluntary, done intelligently
2. done in the presence of his lawyer
3. reduced in writing
4. done under oath

In RA 7438, there are other requirements like:

5. done in the presence of:
   a. a relative
   b. supervisor of DEPS
   c. mayor
   d. local officials in the area
      -to witness his signing
      -to guaranty that there was no force, violence or intimidation or any means to vitiate his free will was used in extracting admission or confession
6. in writing and duly notarized

-B. RIGHT TO BE ASSISTED WITH COUNSEL

-COMPETENCE

A. LAWYER

As regards to competence, as long as he is a lawyer. If he is not a lawyer and the accused did not know that fact, whatever confession or admission made is inadmissible in evidence.

You need not be a bar topnotcher.

B. VIGILANT IN PROTECTING RIGHTS OF ACCUSED

The requirement is he must be one who is vigilant in protecting the right of the accused.

C. PRESENT DURING THE QUESTIONING

He must be present during the conduct of the hearing, not after he was questioned by the law enforcer and the lawyer just arrived to notarize the statement of the accused. That would not be a competent counsel.

D. INDEPENDENT

Independent, meaning, no conflict of interest with respect to the interest of the accused.

So that if he has interest in the outcome of the case that is personal to the lawyer contrary to the interest of the accused, then he is not an independent counsel.

-PREFERABLY ON THE CHOICE OF THE ACCUSED

-NOT ABSOLUTE

What we mean there is that the choice by the accused of his lawyer is not absolute and exclusive.

If he cannot afford the services of counsel, it is the obligation of the law enforcer to provide a COUNSEL DE OFFICIO to the accused.

It is not exclusively his choice to chose his own lawyer.

-WAIVABLE

Is the right to counsel waivable?

YES.

But it must be done:

1. in writing
2. in the presence of counsel

(this portion is inserted – 27.59 mins)

-ASSISTANCE OF COUNSEL IN AN ADMINISTRATIVE INVESTIGATION – NOT REQUIRED

Case: Ampog vs CSC 253 SCRA 293

A party in an administrative inquiry may or may not be assisted by counsel

Case: Perez vs People

While investigations by administrative body may at times be akin to criminal proceedings, a party in an administrative inquiry may or may not be assisted with counsel, irrespective of the nature of the charges and the respondent's capacity to represent himself and no duty rests on such body to furnish the person investigated by counsel.

IOW, that mandatory aspect on the assistance of counsel is only in custodial investigation, not even in a criminal prosecution, except for arraignment.

In administrative, it is not mandatory.

IOW if you are an investigating authority, you are not obliged to provide him with counsel de officio in an administrative cases.

-***C. RIGHT TO BE INFORMED THAT HE HAS THESE RIGHTS***

-NOT WAIVABLE

Is the right to be informed of these rights waivable?

NO.

SEC 13 – RIGHT TO BAIL OR RECOGNIZANCE

SECTION 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

WHEN RIGH TTO BAIL IS AVAILABLE

Another right of the accused before a criminal prosecution is the right to bail.

TN that right to bail is available even before the filing of charges against the accused for as long as he is deprived of his physical liberty illegally.

REMEDIES OF ACCUSED BEFORE FILING OF CHARGES

So if there are no charges yet filed in court, what would then be the remedy of the accused?

Either:

1. file habeas corpus
2. post bail by petitioning the court the fixing of his baiL

Here there could be:

1. bail bond
   a. cash
   b. surety
   c. property
2. recognizance

-CHOICE OF REMEDY IS IN ACCUSED

It is not however the choice of the judge which of kind of bail that accused must avail. It is the choice of the accused.

BAIL BOND

Bail bond is a guaranty of the appearance or the attendance of the accused when he is out on bail or when he is enjoying his provisional liberty; that whenever the court requires his attendance, he would appear in court.

It could either be posted in cash, the title of his property or tax declaration or it could simply be a surety guarantying his appearance in court.

RECOGNIZANCE

Recognizance OTOH is another form of guaranty to the court that while he is out on provisional liberty, he would appear in court. He is just being released to a responsible authority or individual to guaranty his appearance in court whenever it is needed in court.

WHEN BAIL IS A MATTER OF RIGHT, DISCRETIONARY, DENIED

The most important issue in right to bail is knowing when it is a matter of right and when it is discretionary and when it should be denied. It depends on the offense charged.

A. WHEN THE OFFENSE CHARGED IS TRIABLE IN MTC

-TRIAL IN MTC

When the charge against the accused is triable before the first level courts; MTC, before conviction, it is a matter of right.

-AFTER CONVICTION IN MTC AND APPEALED TO RTC

After conviction, and has appealed the conviction to RTC, it is still a matter of right because the penalty does not exceed 6 years of imprisonment.

-IF JUMPED BAIL

What if he jumped bail, would it still be a matter of right?

Yes. The court can only increase the amount of bail but cannot deny the accused the right to bail.

B. WHEN THE OFFENSE CHRAGED IS TRIABLE IN RTC

In RTC, is it a matter of right before conviction?

It depends on the offense charged.

1. IF PENALTY IS RECLUSION PERPETUA TO DEATH

-BEFORE CONVICTION

When the penalty is less than reclusion perpetua to death, IOW it is not a capital offense, (so reclusion temporal downwards), before conviction, it is a matter of right.

-AFTER CONVICTION

Once he is convicted of offenses not punishable by reclusion perpetua to death or life imprisonment, it is discretionary on the trial court except when the condition is attended by an aggravating circumstance, or he has previous record of jumping bail before.

2. IF PENALTY IS MORE THAN 6 YEARS

TN when the penalty is more than 6 years, it should be denied. If there is an application for bail, it will be now for court of appeals to grant it or not; discretionary of the appellate court, but not of the trial court.

A. WHEN OFFENSE IS NON CAPITAL

-BEFORE CONVICTION

Where the offense is non capital, before the conviction, it is a matter of right, no matter how many times you have jumped bail. There can only be an increase in the risk, by increasing the amount of bail.

-AFTER CONVICTION

-GENERAL RULE

But the moment the accused is convicted, that would be a different story. As a GR, it would be discretionary of the trial court, while the judgment of conviction is appealed to the CA.

-EXCEPTION

But the moment it is decided as provided in the rules of criminal procedure, that the accused:

a. is a recidivist,
b. a habitual delinquent,
c. has evaded his sentence,
d. has passed records of conviction,
e. has jumped bail before,
f. he had violated his provision,

that discretion of the TC is removed. IOW the TC has to cancel the bail bond and deny the appeal for or the plead for continue of provisional liberty under the same bail bond.

Should there be any application of bail, it will be addressed now to the CA which has now the discretion to grant it or not.

B. WHEN OFFENSE IS CAPITAL

-PENALTIES UNDER RPC AND SPL TO QUALIFY AS CAPITAL

If the accused is charged with a capital offense;

When we speak of capital offense, under RPC, we mean the penalty is reclusion perpetua to death.

If it is a special law, it is considered as capital offense when the penalty is life imprisonment.

-BEFORE CONVICTION

-DETERMINATION OF EVIDENCE OF GUILT - DISCRETIONARY

Because you have to determine whether evidence of guilt is strong, the court has discretion to evaluate the evidence of the prosecution whether the evidence of guilt on the part of the accused is strong.

While the recommendation of the fiscal is to recommend bail, the accused still has the right to petition for bail. And it is mandatory for the court to conduct a hearing even if the fiscal will make a manifestation that it has no objection for the accused to apply for bail.

The point is, it is mandatory that there must be a conduct of hearing to determine WON the evidence of guilt is strong.

So in that sense, before conviction, it is discretionary.

-WHEN EVIDENCE OF GUILT IS FOUND STRONG – DENIED

But the moment the court makes a declaration that the evidence of guilt is strong, even before conviction, that discretion is removed. And therefore, the right to bail should be denied.

WHEN BAIL SHOULD BE DENIED

1. CHARGED WITH CAPITAL OFFENSE AND EVIDENCE OF GUIT IS STRONG

The exception therefore of the right to bail refers only to persons who are charged with capital offenses and the evidence of guilt is strong.

2. CONVICTED WITH CAPITAL OFFENSE IN RTC

With more reason that he is convicted, that it should be denied.

WHEN BAIL IS DISCRETIONAY

1. CONVICTED WITH NON CAPITAL OFFENSE

It is only when he is convicted of a non capital offense (murder to homicide or rape to acts of lasciviousness), can the accuse now apply for bail.

DETERMINATION OF GRANT IS BASED ON ORIGINAL CHARGE

Insofar as the TC is concerned in determination WON bail should be granted, the basis should be the original charge, not the conviction. Because the moment the case is brought to the appellate court, it will undergo practically a new trial. It is possible that the decision of the lower court may be reversed and instead maintain the original charge by CA.

So even if the accused is convicted only for a lesser offense, not the original charge which is a capital offense, still that right to bail should be denied. Should one apply for bail, it should be addressed to the appellate court, now that he case is being elevated to the appellate court and it is discretionary to the appellate court to grant it or not.

But in the TC, it should be denied.

BAIL NOT AVAILABLE FOR MILITARY MEN

TN bail is not available for military men, regardless of the nature of the offense charged.

BAIL NOT AVAILABLE FOR ADMINISTRTIVE PROCEEDINGS

This is not also available in administrative proceedings.

BAIL AVAILABLE ONLY IN CRIMINAL PROCEEDINGS

This is only available in criminal proceedings.

BAIL GENERALLY NOT AVAILABLE FOR DEPORTATION AND EXTRADITION PROCEEDINGS PROCEEDINGS

Therefore bail is not available for deportation proceedings, except if there is a compelling reason, for humanitarian reason for example, like the deportee is not acceptable in any country including his country of origin.

For as long as there is a guaranty that he will not flee or not violate the laws of the country where he is detained, then he is allowed.

But the GR is it is not available as well in deportation, including extradition proceedings, since these are not criminal proceedings.

Case: Special Administrator vs Judge Oladia

TN of the case involving the Government of HK; potential extradite may be granted bail on the basis of clear and convincing evidence that the person is not a flight risk and will abide with all the orders and processes of the extradition court.

But generally, it is not available in extradition proceedings as it was emphasized in the case of Government of USA vs Borongganan.

CONSIDERATION OF PRIVILEGE MITIGATING CIRCUMSTANCE OF MINORITY

Case:

There is a minor who has been charged with a capital offense; taking into consideration the privilege mitigating circumstances of minority which is one degree lower of the prescribed penalty; if the prescribed penalty is reclusion perpetua, one degree lower, taking into consideration the privilege mitigating circumstance, it will now be reclusion temporal, then it seizes to be a capital offense as far as the minor is concerned. Can he now avail of his right to bail?

YES.

SEC 14 – RIGHTS OF THE ACCUSED DURING CRIMINAL PROSECUTION

SECTION 14.

(1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.

RIGHTS OF ACCUSED DURING CRIMINAL PROSECUTION

1. PRESUMPTION OF INNOCENSE
2. RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM
3. RIGHT TO BE HEARD BY HIMSELF OR COUNSEL
4. RIGHT TO A SPEEDY IMPARTIAL AND PUBLIC TRIAL
5. RIGHT TO FACE TO FACE CONFRONTATION OF THE WITNESSES OF THE PROSECUTION
6. RIGHT TO COMPULSORY PROCESS

1. PRESUMPTION OF INNOCENSE

BURDEN OF PROOF ON THE PROSECUTION

The bottomline line here is not for the accused to prove. Rather it is the duty of the prosecution to prove his guilt beyond reasonable doubt.

DOUBTS RESOLVED IN FAVOR OF THE PRESUMPTION OF INNOCENCE

In case of doubt, it has to be resolved in favor of the accused because of the presumption of innocence.

RULE ON EQUIPOISE

Where the evidence of both is balanced, it has to be resolved in favor of presumption of innocence. And that is the rule on equipoise.

PREVAILS OVER PRESUMPTION OF GUILT BY LAW

Those commissions relating to presumptions of law; can they be reconciled?

In case of doubt, what should always prevail is the presumption of innocence.

Presumption of guilt by the law like anti fencing law and some anti graft laws, what would shift is only the burden of proving his innocence. The moment he overcomes the presumption of law, he continues to enjoy the presumption of innocence.

PRESUMPTION OVER PRESUMPTION OF REGULARITY IN PERFORMANCE

What about presumption of regularity in the performance of duty?

It is always presumption of innocence that will prevail.

2. RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM

ARRAIGNMENT IS CONDITION PRECEDENT TO THE PROSECUTION

This is specially during the arraignment. Precisely arraignment is a condition precedent to the prosecution of the accused.

The accused can never be tried ex parte, or in the absence of the accused without first the accused being arraigned. No trial in absentia can proceed without the accused first being arraigned.

INFORMED OF THE NATURE AND CAUSE OF ACCUSATION

When you say – should be informed of the nature and cause of accusation against him – it means he has to be informed of the allegations in the information.

ALLEGATIONS IN THE INFORMATION PREVAILS OVER TITLE

What is controlling is not the title of the charge but the allegations of the information.

PROSECUTION LIMITED BY THE ALLEGATIONS

What is not alleged in the information, the accused cannot be made to answer to any offense or any facts not alleged in the information. Prosecution should not be allowed to present evidence to prove a face that was not alleged in the information because of the right of the accused to be informed of the nature and the cause of the accusation against him.

So if the charge is for homicide, he cannot be convicted of murder, even if the aggravating circumstance is established and proved beyond reasonable doubt by the prosecution.

That is just simply because he has the right to be informed of the nature and cause of accusation against him.

3. RIGHT TO BE HEARD BY HIMSELF OR COUNSEL

A. RIGHT TO BE PRESENT AT EVERY STAGE OF TRIAL

This means he has the right to be present at every stage of the trial of his case, from arraignment to the promulgation of his judgment. That is his right.

1. DURING ARRAIGNMENT

The presence of the accused in the arraignment is indispensible. That cannot be waived. The reading may be waived, but his presence is indispensible.

2. DURING TRIAL

-GENERAL RULE

During the trial, the presence of the accused can be waived. Provided that, it is not for identification purposes.

-EXCEPTION

So during the trial he need not be present, except when he is needed for identification by the witnesses for the prosecution.

-EXCEPTION TO EXCEPTION

Exception to exception is when he stipulates that whenever his name is called, it refers to the person who is accused in the case charged in the information. If he admits that, then he need not be present.

3. DURING PROMULGATION OF JUDGMENT

During the promulgation of judgment, does he need to be present?

-REQUIREMENT OF NOTICE

For as long as he was duly notified, and he does not appear, the promulgation of judgment must proceed.

-IF ASK FOR POSTPNEMENET – GRANT

However, if he asks for postponement, that should be granted because it is his right to be present during the promulgation of his judgment, specially when he is charged with a capital or a serious offense.

-LIGHT OFFENSE

If it is only light offense, he may be represented by his counsel.

If acquitted, he need not be present.

-LESS GRAVE OR GRAVE OFFENSES

If it is less grave or grave offenses, he must be present.

If he cannot attend, or he does not attend, it doesn't mean that the promulgation is not valid.

B. RIGHT OF ASSITANCE OF COUNSEL

In every stage that he is present, he must be assisted with counsel.

1. DURING ARRAIGNMENT

The presence of counsel during arraignment is mandatory.

-COUNSEL DE OFFICIO

If he cannot afford the services of counsel, he must inform the court the moment he learns about that. It is the obligation of the court to provide him a counsel de officio.

If the court fails to do that, that would be a ground for administrative sanction against the judge.

-IF SECURE OWN PRIVATE COUNSEL

But the moment he secures his private counsel or his own counsel, and the lawyer fails to appear during the trial, doe the court still have the obligation to provide the accused with counsel de officio?

No. not anymore.

Although it is recognized that the right to counsel is an absolute right of the accused, however if the accused is already been assisted with counsel before, the court has no more obligation to provide him with a counsel de officio. In effect, that lawyer would no longer appear during the trial of his case.

Case: People vs Larañaga

There is the discussion there as to the extent of counsel during criminal prosecution especially if the accused has his own counsel. Meaning he got his own counsel to assist him and he is not a counsel de officio.

2. DURING PROMULGATION OF JUDGMENT

-GENERAL RULE

During the promulgation of judgment, he need not be assisted with counsel.

-EXCEPTION

However for grave offenses, he must be assisted with counsel so that he will understand what actions to take, specially if it is a conviction.

3. DURING APPEAL

How about during the appeal? Is the right to counsel still available?

Yes. In fact the justices of SC advice that the accused who cannot afford the right to counsel before the appellate court, because the moment the appellate court is informed about it, it is the duty of the appellate court to provide him a counsel de officio to assist him in his appeal.

4. RIGHT TO A SPEEDY, IMPARTIAL AND PUBLIC TRIAL

A. SPEEDY

-NOT INCONSISTENT WITH POSTPONEMENT

Speedy is not inconsistent with postponements. For as long as the postponement is not vexatious, capricious, and unreasonable, it may be allowed by the court.

-EFFECT IF CAPRICIOUS

But the moment the delay is capricious on the part of the prosecution, then it may be dismissed. And the dismissal based on the ground of violation of the accused right to a speedy trial; it amounts to an acquittal and can be used as basis to claim double jeopardy.

-REMEDIES IF VIOLATED

What would be the remedy of the accused if his right is violated?

1. MOVE FOR DISMISSAL
   He should move for the dismissal of the case.
2. APPLY FOR WRIT OF HABEAS CORPUS
   And if he is detained, he can always apply for a writ of habeas corpus.

B. IMPARTIAL

We have discussed about this when we were discussing due process. The court must observe neutrality.

C. PUBLIC

-MUST BE CONTINUOUS

This is the reason why Ampatuan case, relating to the broadcasting of the proceedings, however it has to be continuous. No breaking it for the duration of the day, should there be a broad cast.

Apparently, no TV station would want that because there will be no advertisements.

-NO COMMENTS

And there should not be any comments relating to it. Just as is.

-REASON WHY ALLOWED IN AMPATUAN

The reason why public trial is allowed here, contrary to the case of Estrada vs Disierto, is because they cannot accommodate everybody in the court room which is so small. And there is also a question of security.

And there are too many victims in the case and too many members of the family who would want to attend however they can't because they are in Mindanao. They cannot afford to come to Manila and witness the conduct of the hearing.

-OPEN TRIAL IRRESPECTIVE OF RELATIONSHIP

It is right also of the accused to a public trial. Trial open to the public irrespective of the people's relationship to the accused.

So accommodate this right of the accused as well as of the complainant of due process, thus the allowing of the broadcasting.

-NOT SUBJECT TO PUBLIC OPINION

However this does not mean that it is a trial that will be subjected to public opinion.

That's why there's so many provisions for allowing the broadcasting of the trial of the Ampatuan case.

-LIMITATION IN AMPATUAN CASE

The only limitation of the Ampatuan case is that the only evidence that would be adduced during the trial would be offensive to public decency and public morals, in which case, the accused may ask for the exclusion of the public.

TN that this is a right of the accused.

-NOT EQUIVALENT TO PUBLICITY

This is not equivalent to publicity. Publicity is prohibited. Publicity amount to placing the person under the scrutiny of public opinion. And it might affect his right to due process because of the possibility of the court being influenced by the public or of the media.

So there was a good discussion that was recently decided in Ampatuan. There is a good discussion with regards to consistency of the right to consistency of the right to public trial of the accused, whether there is violation of due process.

Apparently SC said, there is no violation for as long as the conditions are complied with.

5. RIGHT TO FACE TO FACE CONFRONTATION OF THE WITNESSES OF THE PROSECUTION

RIGHT TO CROSS EXAMINE

This is with respect to the right of the accused to cross examination of the witnesses.

GUARANTY – ONLY OPPORTUNITY

TN that this face to face confrontation is a right that is availed of by the accused. And what is guaranteed is only the opportunity.

WHEN NOT AVAILABLE

1. EXPRESS OR IMPLIED WAIVER

IOW you can waive this right. Example, if he does not appear during the trial, then he may be denied of his right to a face to face confrontation in a trial in absentia.

2. DYING DECLARATIONS

Another exception, dying declarations cannot be confronted by the accused. Obviously because the persons who made the dying declarations are already dead.

3. EXAMINATION OF CHILD WITNESS

Of course, you have the examination of a child witness. There may not be a face to face confrontation. If there is any question by the accused to the witness, it will be coursed through certain individuals in order to protect the child.

We have this audio-video taking of the testimony of the child and if there is any question that would be asked, it would either be referred to the lawyer or the judge.

4. THROUGH AFFIDAVIT OR DEPOSITIONS

You also have that exception where there was the witness however is no longer qualified to testify maybe because he has become insane or maybe because he has gone abroad already and his whereabouts are unknown, in which case it has given an affidavit or deposition of his testimony. That may be admitted in evidence even if the accused has not confronted the witness on that statement given in an affidavit or a deposition.

6. RIGHT TO COMPULSORY PROCESS

This is for the asking of subpoena, either:

1. subpoena ad testificandum
2. subpoena duces tecum

1. SUBPOENA AD TESTIFICANDUM

SUBPOENA AD TESTIFICANDUM is when you compel a witness to appear in court and testify.

-WITNESS – ON RIGHT AGAINST SELF INCRIMINATION

Can a witness invoke his right against self incrimination?

Can he refuse to take the witness stand?

GR: CANNOT INVOKE – MUST TAKE STAND

NO.

EXPT: 1. ASKED SELF INCRIMINATING QUESTIONS

The right to self incrimination can only be invoked when asked incriminating questions. He can be compelled to take the witness stand.

LIMITATION:

However TN of the limitation. When however he lives or resides more than 15 km away from the court sits, he may not be compelled to testify.

EXPT:

Unless his testimony is relevant to the case and there is no other witness to testify.

2. SUBPOENA DUCES TECUM

When one is compelled to bring documents or other evidences and testify thereon.

-WITNESS – ON RIGHT AGAINST SELF INCRIMINATION

If they are self incriminating, can he be compelled to take the witness stand?

GR: MUST TAKE STAND

Yes.

EXPT: 1. WHEN CONFRONTED WITH EVIDENCE

He can invoke right against self incrimination only when he is confronted with evidence.

-***GRANT OF IMMUNITY***

OW he may ask for the grant of immunity. There are two kinds of immunity hat he may ask:

a. use and fruit immunity
b. transactional immunity

On the USE AND FRUIT IMMUNITY, where the witness may be compelled to testify or bring a self incriminating evidence, and testify thereon, provided that the compelled testimony or compelled evidence may not be used against him. So he may be prosecuted, however evidence cannot be used against him.

On the TRANSACTIONAL IMMUNITY, there is practically an absolute immunity because the compelled testimony or the compelled evidence cannot be used against him, neither an he be prosecuted in connection with this testimony and evidence.

SEC 16 – RIGHT TO SPEEDY DISPOSITION OF CASES

SECTION 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

SEC 17 – RIGHT OF ACCUSED AGAINST SELF INCRIMINATION

SECTION 17. No person shall be compelled to be a witness against himself.

COVERAGE

1. judicial
2. quasi judicial
3. administrative
4. legislative inquiries

WHO AVAILS

1. accused
2. witness

STATUTES APPLICABLE

1. Case: Miranda vs Arizona
2. 5th Amendment of US

WHEN AVAILED

1. ACCUSED IN CRIMINAL CASE

If you are the accused, can you be compelled to testify against the co-accused?

NO.

You can invoke this right the moment you are called to a witness stand.

2. RESPONDENT IN ADMINISTRATIVE CASE

But a respondent in an administrative proceedings, both cannot be compelled to take the witness stand. Because administrative proceedings is similar to criminal proceedings.

If convicted, he could lose his license or profession which is his property.

3. WITNESS

Insofar as the witness is concerned, when can he invoked?

Only when he is asked the self incriminating questions.

IOW he cannot refuse to take the witness stand.

4. PLAINTIFF IN CIVIL CASE

A plaintiff as a witness, can he be compelled to take the witness stand?

YES. When his testimony s relevant to the resolution of the case.

Like as hostile witness.

EXCPETIONS WHERE ACCUSED MAY TESTIFY AGAINST A CO-ACCUSED

There are exceptions where accused may testify against a co-accused, even if it would incriminate him:

1. *if he is discharged as a state witness*

The moment he is discharged as a state witness, the case with respect to him is already terminated. So there is no danger of self incrimination anymore.

He is deemed acquitted already.

2. *if the case with respect to him is already terminated*

The termination is either by his acquittal or conviction.

3. *if separate proceedings have been conducted on the same case however arising from the same incident*

In some cases, the fiscals file the case as the accused have been arrested. Those at large, they will not include. The moment they are arrested, they would file against them after.

ACTS PROTECTED THAT ARE SELF INCRIMINATING

1. giving of oral testimony
2. giving of answer or reply to querries
3. acts that are communicative in nature
   a. sample of hand writing
   b. reenactment of the commission of the crime
   c. signing an inventory receipt
   d. signing of letter that is used against you
   e. signing of booking sheet without assistance of a counsel

MECHANICAL COMMUNICATIVE ACTS

TN of communicative acts that are merely mechanical and therefore even if it will incriminate the accused, it is admissible in evidence.

1. paraffin testing
2. physical examination of the body
3. DNA testing
4. extraction of hair, saliva or fluids of body of accused

Case: People vs Yatar

These are admissible against the accused because there is no use of intelligence and free will.

EXTEND TO ADMINISTRATIVE INVESTIGATION

Case: Standard Chartered Bank vs Senate Committee

Does this extend to administrative investigation?

SC said yes. Because the investigation partakes the nature or is analogous to criminal proceedings.

SC said that the privilege has consistently been held to extend to all proceedings sanctioned by law and all cases in which punishment is sought to be visited upon a witness whether a party or not.

NOT APPLY TO PUBLIC DOCUMENTS

Does this apply to public documents?

Case: Almonte vs Vasquez

NO.

Case: Savio

On public documents, even if it is incriminating, the public officer can be compelled to produce them.

AIVALIABLE ONLY TO NATURAL PERSONS

Can this be invoked by the juridical persons?

NO.

This is only availed of by natural persons. Because juridical persons is subject to police power of the state in compliance with, for example:

1. fiscal laws
2. sanitary laws
3. taxation laws of the state

SEC 19 – RIGHT AGAINST CRUEL AND DEGRADING AND INHUMAN PUNISHMENT

SECTION 19.

(1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

TN that it is right against cruel and degrading and inhuman punishment, it is AND not or.

DEGRADING PUNISHMENT

A penalty is degrading if it exposes the person to public humiliation. So it must be severe as to be degrading to the dignity of the human beings. And it is applied arbitrarily to the person.

PROHIBITED ACTS

1. use of torture or lingering suffering
2. excessive fines

DEATH PENALTY

There is no more issue to that.

SEC 21 – RIGHT AGAINST DOUBLE JEOPARDY

SECTION 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

KINDS OF DOUBLE JEOPARDY

There are two kinds of double jeopardy:

1. one is twice put in jeopardy for the same offense
2. act is punished by a law and an ordinance

Conviction or acquittal under either shall constitute a bar to another prosecution of the same act.

A. ONE IS TWICE PUT IN JEOPARDY FOR THE SAME OFFENSE

ELEMENTS

1. there is the first jeopardy
2. first jeopardy is terminated
3. there is the second jeopardy

1. THERE IS THE FIRST JEOPARDY

-WHEN THERE IS FIRST JEOPARDY

When is there first jeopardy?

a. complaint is valid
b. court has jurisdiction over the case
   -tribunal or court is competent to hear and try the case
c. accused has been arraigned and entered into a valid plea

So if the complaint is invalid, the case is dismissed. When the case is refiled, will there be double jeopardy?

NO.

Even if complaint is valid, however the court has no jurisdiction over the case, case is dismissed. Then the case is filed in the proper court, will there be double jeopardy?

NO.

When the case has been dismissed even before the arraignment of the accused, can there be a refiling of the case?

YES. Because the accused has not been arraigned yet.

Where the accused was arraigned and he pleaded not guilty, however after he was allowed to present a mitigating evidence, has proven justifying evidence and thereby resulting to his acquittal, can the judgment be appealed?

YES. Because there was no valid plea entered. The plea of not guilty was deemed to withdrawn when the accused presented a justifying evidence that led to his acquittal. So it was as if no valid plea was entered.

-ON PLEA BARGAINING

When there is no valid plea bargaining…

What are the requirements of a valid plea bargaining?

a. with consent of complainant
b. if the complainant does not appear, his absence is unjustified despite notice
c. with consent of prosecutor

2. FIRST JEOPARDY IS TERMINATED

-HOW TERMINATED

a. acquittal
b. conviction

(c. dismissal of the case without the consent of the accused)

A. ACQUITTAL

This is when the case is dismissed because the guilt of the accused has bit been proven beyond reasonable doubt.

So even if the judgment of acquittal is erroneous, still that cannot be appealed.

-EXCEPTION: MISTRIAL

Unless there is a mistrial, because there was no impartial tribunal before the case.

For as long as the acquittal is valid, there can never be a refilling of the case.

-***Case: Perman vs SB***

They got acquitted and thereafter it was appealed to SC and allowed the retrial of the case because according to SC, their judgment of the court was void because considering at that time, it was the Marcos administration, the courts are being controlled by the president. So there was no impartial proceedings at the time.

-NO APPEAL AFTER ACQUITTAL

Precisely because of double jeopardy, the prosecution cannot appeal a valid judgment of acquittal.

B. CONVICTION

So when the accused is convicted, then that cannot be refilled anymore.

-APPEAL ONLY BY ACCUSED – DEEMED WAIVED RIGHT

Can the fiscal appeal the judgment of conviction? Such as the fiscal was not satisfied of the judgment rendered by the court, can the prosecution appeal?

NO.

Unless the accused appeals the judgment of conviction. It is then that the accused is considered to have waived his right against double jeopardy.

The moment the accused appeals the judgment of conviction, now the prosecution can appeal the judgment.

-***Case: People vs Larranaga***

The penalty was only reclusion perpetua because Judge Ocampo then refused to impose the death penalty. They appealed the decision and prosecution likewise appealed the judgment because for them it should have been death.

So when they appealed the decision to CA, it was increased to death. And you cannot anymore complain about double jeopardy because an appeal is considered to have been a waiver of that right to invoke double jeopardy.

C. DISMISSAL OF THE CASE WITHOUT THE CONSENT OF THE ACCUSED (!!!)

-GR: NOT INITIATED BY THE ACCUSED

When you say, dismissal of the case without the consent of the accused, dismissal must not be initiated by the accused.

Because if the accused initiated the dismissal of the case by filing a motion to dismiss, then the accused is deemed to have waived his right to invoke double jeopardy.

-EXPT: WHEN DISMISSAL MAY BE INITIATED BY ACCUSED BUT WILL STILL AMOUNT TO DOUBLE JEOPARDY

Except of the following instances:

1. *when the motion to dismiss is grounded on the right to speedy trial*

It is the accused who files the motion to dismiss. If it is granted, it is a dismissal without the consent of the accused.

It is tantamount to the acquittal and there cannot be reinstatement or refilling of the case for it will now constitute double jeopardy.

2. *when the accused files a demurer to evidence*

When the accused files a demurer to evidence, this is actually a motion to dismiss, after the prosecution has rested its case, on the ground that the evidence of prosecution is insufficient to prove the guilt of the accused beyond reasonable ground and the case is dismissed.

The dismissal is tantamount to the acquittal. And therefore, the refilling of the case or appeal of the judgment of dismissal is tantamount to double jeopardy.

3. *lapse of 1 or 2 years after grant of PROVISIONAL DISMISSAL moved for by the accused*

However in cases where accused moved for the dismissal so that means it is dismissed with the consent of the accused, usually the court would grant a provisional dismissal of the case.

If dismissed, would it constitute double jeopardy?

NO.

EXPT if after the lapse of certain period of time, there cannot be anymore reinstatement.

For example. Dismissal upon the initiative of the accused. There's a provisional dismissal because the witnesses of the prosecution cannot be secured and the fiscal moves for the dismissal of the case with the consent or express conformity of the accused. What will happen?

There will be no more double jeopardy until after 2 years where the offense charged is punishable by more than 6 years of imprisonment or one year if the penalty is 6 years or less.

After the lapse of 2 years and 1 year, double jeopardy will now set in. It cannot be anymore refiled.

Rule 117 of Rules of Court – a provisional dismissal of the case becomes definite after the lapse of one year for offenses punishable by imprisonment of not exceeding 6 years or a lapse of 2 years for offenses punishable by imprisonment by more than 6 years; there can be no reinstatement anymore.

Case: People vs Lacson, May 28, 2002

3. THERE IS THE SECOND JEOPARDY

When is there now a second jeopardy?

A second jeopardy would attach after the termination of the second jeopardy if:

1. *the first offense is similar to the second offense. They are identical.*

How do you know that they are identical?

Because the evidence presented in the first offense is the same as the evidence presented in the second offense.

2. *when the first offense is just an attempt or frustration of the second offense or vise versa of the second offense*

3. *when the one offense is necessarily included in the other offense*

EXPT: RULE OF SUPERVENING EVENT

So for example in the case of serious physical injuries that developed into the death of the victim, and thus a homicide case is filed, that would not constitute as double jeopardy, even if it was filed after the termination of first jeopardy because of the rule of supervening event.

-SHOULD HAPPEN AFTER TERMINATION OF FIRST JEOPARDY

The supervening event should happen after the termination of the first jeopardy.

-EXPT: NO KNOWLEDGE UNTIL TERMINATION

Unless the prosecution or the prosecutor did not know of the development until after the termination of the first jeopardy.

-IF HAPPEN DURING PENDENCY OF FIRST JEOPARDY

Because if it is known to the prosecutor during the pendency of the first jeopardy, what should have been done?

The prosecutor should have amended the information to charge the accused of the appropriate offense.

OW his failure to do that will preclude him in the future to file a case that developed into a more serious event.

A. ACT IS PUNISHED BY A LAW AND AN ORDINANCE

Conviction or acquittal by either would bar the prosecution.

Example. Jay walking is punishable by law or ordinance. If one is already convicted for violating the law, he cannot be anymore be punished for violating the ordinance punishing the same act.

TERMINATION OF FIRST JEOPARDY

-CONVICTION AND ACQUITTAL

The termination of the first jeopardy is only through conviction or acquittal only. Not dismissal without the consent of the accused.

-DISMISSAL DUE TO INSUFFICIENCY OF EVIDENCE AND SPEEDY TRIAL

The this however on the failure to prosecute on the part of the prosecution on the right to speedy trail and insufficiency of the evidence where there is dismissal of the case, that is tantamount to acquittal.

So the same grounds can be used by the accused to move for the dismissal of the case. And there would be a termination of the first jeopardy there because the grounds cited by the accused in the motion to dismiss for violation either of an ordinance or law are amounting to an acquittal of the accused.

SEC 22 – EX POST FACTO LAW

SECTION 22. No ex post facto law or bill of attainder shall be enacted.

A. EX POST FACTO LAW

It is prohibited.

It refers to criminal matters that are applied retroactively to the disadvantage of the accused.

KINDS

1. a law that makes an act or omission a crime when committed was not yet punishable by law
2. was punishable by law but aggravates the offense by increasing the penalty
3. accused is deprived of certain protection relating to the prosecution of his case

   Like changing the rules of evidence relating to proving his innocence or guilt. Like instead of proof of guilt beyond reasonable doubt, it is reduced to just prima facie evidence. Or like instead of presumption of innocence, there is presumption of guilt.

APPLIED RETROACTIVELY

If it is applied retroactively, then there is an ex post facto law. There cannot be any problem if it is applied prospectively even if it is for the disadvantage of accused.

INCREASE OF PERIOD OF PRESCRIPTION

Increasing the period of prescription in the prosecution of an action applied retroactively is at the disadvantage of the accused. It cannot be allowed because it would be an ex post facto law.

PROCEDURAL MATTER – NOT EX POST FACTO

However if it is basically a procedural matter like on jurisdiction for instance, then that may not be considered an ex post facto law.

ONLY REFER TO CRIMINAL MATTER

The thing that you must always remember is that the law must refer to a criminal matter. It involves the:

1. definition of the crime
2. punishment and penalty

Anything that will be to the disadvantage to the accused and applied retroactively, then definitely, that is an ex post facto law, prohibited by law.

Case: Lacson vs Executive Secretary

On the expansion of the jurisdiction of Sandigan Bayan under RA 8249; according to SC, it is not a penal law but a substantive law on jurisdiction, whose retroactive application is constitutional.

Case: Villar vs People

A law can never be considered ex post facto law as long as it operates prospectively because restriction would cover only offenses committed after and not before its enactment.

APPLY TO COURT DOCTRINES

The prohibition of ex post facto law and law of attainder applies to court doctrines pursuant to the maxim that interpretation based upon the written law by a competent court has the force of law.

USE OF UNLICENSE FIREARM AS A QIALIFYING CIRCUMSTANCE – NO RETROACTOIVE APPLICATION

Can you apply retroactively the law making use of an unlicensed firearm as a qualifying circumstance in murder case?

Case: People vs Patok

Instead of having separate offenses, it will just be a qualified circumstance; you can apply that to cases that have been filed prior after the jurisprudence had been established. But it cannot be applied retroactively.

Because it will now constitute an ex post facto law.

USE OF DNA – NOT AN EX POST FACTO LAW

In the use of DNA test and applied retroactively, SC said that ha is not considered an ex post facto law.

B. BILL OF ATTAINDER

It is a legislative act which imposes a penalty or punishment without judicial trial.

If it is less than death, it is BILL OF PAINS AND PENALTIES.
If it is death, it is BILL OF ATTAINDER.

CHARACTERISTICS

1. *there is a law*

2. *law imposes a penal or criminal burden on an individual or ascertainable members of a group*

Burden must be criminal in nature. Like a fine or imprisonment for doing an act which is punishable by law.

3. *it is imposed directly the law without judicial trial*

It is in the law itself. There is no need for hearing. Like depriving for example a person of a privilege or a right in the law itself.